

District of Columbia Code

1973 EDITION ☆ SUPPLEMENT III

1976



TITLES 1-49

TABLES AND INDEX

DISTRICT OF COLUMBIA CODE

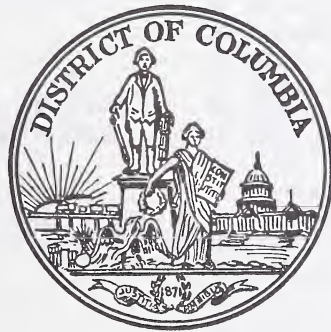
1973 EDITION

SUPPLEMENT III

LAWS—January 3, 1973, to January 18, 1976

NOTES TO DECISIONS—January 1, 1973, to December 31, 1975

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Councilmember Wilhelmina J. Rolark
Ward 8

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PREFACE

This third supplement to the 1973 edition of the District of Columbia Code has been prepared and published under the provisions of section 285b(6) of title 2, United States Code, as amended by Public Law 94-386, approved August 14, 1976. This supplement contains the additions to and changes in the general and permanent laws relating to or in force in the District of Columbia, enacted during the Ninety-third Congress and the first Session of the Ninety-fourth Congress by Congress and by the Council of the District of Columbia (except laws applicable in the District of Columbia by reason of being general and permanent laws of the United States).

On completion of the second supplement to the 1973 edition of the District of Columbia Code, the Law Revision Counsel of the House of Representatives fulfilled his statutory responsibility to prepare and publish until January 2, 1975 (the effective date of the District of Columbia Self-Government and Governmental Reorganization Act), new editions of the District of Columbia Code and annual cumulative supplements thereto.

On January 27, 1976, the Council of the District of Columbia adopted Resolution 1-182, containing a request to Congress that the Law Revision Counsel continue the preparation and publication of the supplements to the District of Columbia Code until the current cycle of supplements is completed. Subsequent to transmittal of the resolution to Congress by the Chairman of the District of Columbia Council (see Cong. Rec., vol. 122, p. H871, Daily Issue; Exec. Comm. 2487), legislation was enacted (Public Law 94-386, approved August 14, 1976) directing the Law Revision Counsel to prepare and publish annual cumulative supplements to the District of Columbia Code through publication of the fifth annual supplement to the 1973 edition. Thereafter, new editions of the Code, and annual cumulative supplements thereto, are to be prepared and published under the direction of the Council of the District of Columbia.

This supplement, together with the 1973 edition, establishes *prima facie* those laws in effect on January 18, 1976, except that titles 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, and 28, having been enacted into law establish legal evidence of the law contained in those titles.

The 1973 edition of the Code was completely annotated with notes to decisions of the courts affecting the respective sections of the Code. These notes have been brought up to the indicated pages in the following reports:

96 S. Ct. 578; 527 F.2d 1380; 407 F. Supp. 1407; 350 A.2d 224

This supplement continues the practice of setting out notes captioned "Reference in text", "Codification", "Section referred to in other sections", and "Cross references". These notes have proved to be useful to Congress, the bench and bar, and the public.

This supplement has been prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives. Grateful acknowledgment is made of the cooperation by all who have helped in this work, particularly by the staff of the Office of the Law Revision Counsel and by the Government Printing Office.

Carl Albert

Speaker of the House of Representatives

Washington, D.C.
September 30, 1976



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ACTS RELATING TO THE ESTABLISHMENT OF
THE DISTRICT OF COLUMBIA AND ITS VARIOUS
FORMS OF GOVERNMENTAL ORGANIZATION

DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT

AN ACT To reorganize the governmental structure of the District of Columbia, to provide a charter for local government in the District of Columbia subject to acceptance by a majority of the registered qualified electors in the District of Columbia, to delegate certain legislative powers to the local government, to implement certain recommendations of the Commission on the Organization of the Government of the District of Columbia, and for other purposes

[Passed December 24, 1973]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

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TITLE I—SHORT TITLE, PURPOSES, AND DEFINITIONS

SHORT TITLE

SEC. 101. This Act may be cited as the "District of Columbia Self-Government and Governmental Reorganization Act".

STATEMENT OF PURPOSES

SEC. 102. (a) Subject to the retention by Congress of the ultimate legislative authority over the Nation's Capital granted by article I, section 8, of the Constitution, the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the election of certain local officials by the registered qualified electors in the District of Columbia; grant to the inhabitants of the District of Columbia powers of local self-government; to modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and, to the greatest extent possible, consistent with the constitutional mandate, relieve Congress of the burden of legislating upon essentially local District matters.

(b) Congress further intends to implement certain recommendations of the Commission on the Organization of the Government of the District of Columbia and take certain other actions irrespective of whether the charter for greater self-government provided for in title IV of this

Act is accepted or rejected by the registered qualified electors of the District of Columbia.

DEFINITIONS

SEC. 103. For the purposes of this Act—

- (1) The term "District" means the District of Columbia.
- (2) The term "Council" means the Council of the District of Columbia provided for by part A of title IV.
- (3) The term "Commissioner" means the Commissioner of the District of Columbia established under Reorganization Plan Numbered 3 of 1967.
- (4) The term "District of Columbia Council" means the Council of the District of Columbia established under Reorganization Plan Numbered 3 of 1967.
- (5) The term "Chairman" means, unless otherwise provided in this Act, the Chairman of the Council provided for by part A of title IV.
- (6) The term "Mayor" means the Mayor provided for by part B of title IV.
- (7) The term "act" includes any legislation passed by the Council, except where the term "Act" is used to refer to this Act or other Acts of Congress herein specified.
- (8) The term "capital project" means (A) any physical public betterment or improvement and any preliminary studies and surveys relative thereto; (B) the acquisition of property of a permanent nature; or (C) the purchase of equipment for any public betterment or improvement when first erected or acquired.
- (9) The term "pending", when applied to any capital project, means authorized but not yet completed.
- (10) The term "District revenues" means all funds derived from taxes, fees, charges, and miscellaneous receipts, including all annual Federal payments to the District authorized by law, and from the sale of bonds.
- (11) The term "election", unless the context otherwise provides, means an election held pursuant to the provisions of this Act.
- (12) The terms "publish" and "publication", unless otherwise specifically provided herein, mean publication in a newspaper of general circulation in the District.
- (13) The term "District of Columbia courts" means the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.
- (14) The term "resources" means revenues, balances, revolving funds, funds realized from borrowing, and the District share of Federal grant programs.
- (15) The term "budget" means the entire request for appropriations and loan or spending authority for all activities of all agencies of the District financed from all existing or proposed resources and shall include both operating and capital expenditures.

TITLE II—GOVERNMENTAL REORGANIZATION

REDEVELOPMENT LAND AGENCY

SEC. 201. The District of Columbia Redevelopment Act of 1945 (D.C. Code, secs. 5-701—5-719) is amended as follows:

(a) Subsection (a) of section 4 of such Act (D.C. Code, sec. 5-703(a)) is amended to read as follows:

"(a) The District of Columbia Redevelopment Land Agency is hereby established as an instrumentality of the District of Columbia government, and shall be composed of five members appointed by the Commissioner of the District of Columbia (hereinafter referred to as the 'Commissioner'), with the advice and consent of the Council of the District of Columbia (hereinafter referred to as the 'Council'). The Commissioner shall name one member as chairman. No more than two members may be officers of the District of Columbia government. Each member shall serve for a term of five years except that of the members first appointed under this section, one shall serve for a term of one year, one shall serve for a term of two years, one shall serve for a term of three years, one shall serve for a term of four years, and one shall serve for a term of five years, as designated by the Commissioner. The terms of the members first appointed under this section shall begin on or after January 2, 1975. Should any member who is an officer of the District of Columbia government cease to be such an officer, then his term as a member shall end on the day he ceases to be such an officer. Any person appointed to fill a vacancy in the Agency shall be appointed to serve for the re-

¹ Item 724 was added by Act Apr. 17, 1974, Pub. L. 93-268, § 3(b), 88 Stat. 87.

² Item 738 amended by Act Oct. 30, 1975, D.C. Law 1-27, § 2(b), 22 DCR 2471.

³ Section 741 was repealed by Act Apr. 17, 1974, Pub. L. 93-268, § 4(c), 88 Stat. 87.

mainder of the term during which such vacancy arose. Any member who holds no other salaried public position shall receive compensation at the rate of \$100 for each day such member is engaged in the actual performance of duties vested in the agency."

(b) Subsection (b) of section 4 of such Act (D.C. Code, sec. 5-703(b)) is amended—

(1) by inserting after "forth" at the end of the first sentence of such section " , except that nothing in this section shall prohibit the District of Columbia government from dissolving the corporation, eliminating the board of directors, or taking such other action with respect to the powers and duties of such Agency, including those actions specified in subsection (c), as is deemed necessary and appropriate", and

(2) by striking out in the second sentence "including the selection of its chairman and other officers," and inserting in lieu thereof "including the selection of officers other than its chairman."

(c) Section 4 of such Act is amended by adding at the end thereof the following new subsection:

"(c) The Council is authorized, by act, to adopt legislation—

"(1) establishing, for the purpose of assuring uniform procedures relating to the disposition of complaints and other claims involving the Redevelopment Land Agency (or its successor) and other administrative units of the District of Columbia government, a factfinding board to receive, hear, and act on such complaints and claims arising out of or in connection with administrative and other actions of such Agency or units in carrying out their powers and functions;

"(2) providing that all planning, designing, construction, and supervision of public facilities which are to be contributed to any redevelopment area as the local non-cash grant-in-aid to the project under title I of the Housing Act of 1949, shall, to the extent practicable, be carried out by an appropriate District of Columbia department or agency on the basis of a contractual or other arrangement with the Redevelopment Land Agency or its successor;

"(3) providing that any occupied rental property owned by the Agency shall be maintained by such Agency (or its successor) in a safe and sanitary condition; or

"(4) providing that the Commissioner shall have authority to waive all or any part of any special assessments levied against abutting property owners for the cost of sewers, streets, curbs, gutters, sidewalks, utilities, and other supporting facilities or project improvements where the costs therefor to the District of Columbia can be applied as a non-cash local grant-in-aid, as defined by the Secretary of the Department of Housing and Urban Development."

(d) The first sentence of subsection (b) of section 5 of such Act (D.C. Code, sec. 5-704(b)) is amended to read as follows "Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with subchapter II of chapter 13 of title 16 of the District of Columbia Code."

(e) None of the amendments contained in this section shall be construed to affect the eligibility of the District of Columbia Redevelopment Land Agency to continue participation in the small business procurement programs under section 8(a) of the Small Business Act (67 Stat. 547).

(f) For the purposes of subsection 713(d), employees in the District of Columbia Redevelopment Land Agency shall be deemed to be transferred to the District of Columbia as of the effective date of this title without a break in service.

NATIONAL CAPITAL HOUSING AUTHORITY

Sec. 202. (a) The National Capital Housing Authority (hereinafter referred to as the "Authority") established under the District of Columbia Alley Dwelling Act (D.C. Code, secs. 5-103—5-116) shall be an agency of the District of Columbia government subject to the organizational and reorganizational powers specified in sections 404(b) and 422(12) of this Act.

(b) All functions, powers, and duties of the President under the District of Columbia Alley Dwelling Act shall be vested in and exercised by the Commissioner. All employees, property (real and personal), and unexpended

balances (available or to be made available) of appropriations, allocations, and all other funds, and assets and liabilities of the Authority are authorized to be transferred to the District of Columbia government.

NATIONAL CAPITAL PLANNING COMMISSION AND MUNICIPAL PLANNING

SEC. 203. (a) Subsections (a) and (b) of section 2 of the Act entitled "An Act providing for a comprehensive development of the park and playground system of the National Capital", approved June 6, 1924 (D.C. Code, sec. 1-1002), are amended to read as follows:

"(a) (1) The National Capital Planning Commission (hereinafter referred to as the 'Commission') is created as the central Federal planning agency for the Federal Government in the National Capital, and to preserve the important historical and natural features thereof, except with respect to the United States Capitol buildings and grounds as defined in sections 1 and 16 of the Act of July 31, 1946 (40 U.S.C. 193a, 193m) [D.C. Code, secs. 9-118, 9-132], and to any extension thereof or additions thereto, or to buildings and grounds under the care of the Architect of the Capitol.

"(2) The Commissioner of the District of Columbia (hereinafter referred to as the 'Commissioner') shall be the central planning agency for the government of the District of Columbia (hereinafter referred to as the 'District') in the National Capital. The Commissioner shall be responsible for coordinating the planning activities of the District government and for preparing and implementing the District elements of the comprehensive plan for the National Capital, which may include land use elements, urban renewal and redevelopment elements, a multiyear program of public works for the District, and physical, social, economic, transportation, and population elements. The Commissioner's planning responsibility shall not extend to Federal or international projects and developments in the District, as determined by the Commission, or to the United States Capitol buildings and grounds as defined in sections 1 and 16 of the Act of July 31, 1946 (40 U.S.C. 193a, 193m) [D.C. Code, secs. 9-118, 9-132], or to any extension thereof or additions thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibility under this section, the Commissioner shall establish procedures for citizen participation in the planning process, and for appropriate meaningful consultation with any State or local government or planning agency in the National Capital region affected by any aspect of a comprehensive plan (including amendments thereto) affecting or relating to the District.

"(3) The Commissioner shall submit each District element of the comprehensive plan and any amendment thereto, to the Council for revision or modification, and adoption, by act, following public hearings. Following adoption and prior to implementation, the Council shall submit each such element or amendment to the Commission for review and comment with regard to the impact of such element or amendment on the interests or functions of the Federal Establishment in the National Capital.

"(4) (A) The Commission shall, within sixty days after receipt of such a District element of the comprehensive plan, or amendment thereto, from the Council, certify to the Council whether such element or amendment has a negative impact on the interests or functions of the Federal Establishment in the National Capital. If within such sixty days the Commission takes no action with respect to such element or amendment, such element or amendment shall be deemed to have no such negative impact, and such element or amendment shall be incorporated into the comprehensive plan for the National Capital and shall be implemented.

"(B) If the Commission finds, within such sixty days, such negative impact, it shall certify its findings and recommendations with respect to such negative impact to the Council. Upon receipt of the Commission's findings and recommendations, the Council may—

"(i) reject such findings and recommendations and resubmit such element or amendment, in a modified form, to the Commission for reconsideration; or

"(ii) accept such findings and recommendations and modify such element or amendment accordingly.

If the Council accepts such findings and recommendations and modifies such element or amendment under clause (1), the Council shall submit such element or amendment to the Commission for it to determine whether such modification has been made in accordance with the Commission's findings and recommendations. If, within thirty days after receipt of the modified element or amendment, the Commission takes no action with respect to such element or amendment, it shall be deemed to have been modified in accordance with such findings or recommendations, and shall be incorporated into the comprehensive plan for the National Capital and shall be implemented. If within such thirty days, the Commission again determines such element or amendment to have a negative impact on the functions or interests of the Federal Establishment in the National Capital such element or amendment shall not be implemented.

"(C) If the Council rejects the findings and recommendations of the Commission and resubmits a modified element or amendment to it under clause (1), the Commission shall, within sixty days after receipt of such modified element or amendment from the Council, determine whether such modified element or amendment has a negative impact on the interests or functions of the Federal Establishment within the National Capital. If the Commission finds such negative impact it shall certify its findings (in sufficient detail that the Council can understand the basis of the objection of the Commission) and recommendations to the Council, and such element or amendment shall not be implemented. If the Commission takes no action with respect to such modified element or amendment within such sixty days, such modified element or amendment shall be deemed to have no such negative impact and shall be incorporated into the comprehensive plan and it shall be implemented. Any element or amendment which the Commission has determined to have a negative impact on the Federal Establishment in the National Capital, and which is submitted again in a modified form not less than one year from the day it was last rejected by the Commission shall be deemed to be a new element or amendment for purposes of the review procedure specified in this section.

"(D) The Commission and the Commissioner shall jointly publish from time to time as appropriate, a comprehensive plan for the National Capital, consisting of the elements of the comprehensive plan for the Federal activities in the National Capital developed by the Commission, and the District elements developed by the Commissioner and the Council in accordance with the provisions of this section.

"(E) The Council may grant, upon request made to it by the Commission, an extension of any time limitation contained in this section.

"(F) The Commission and the Commissioner shall jointly establish procedures for appropriate meaningful continuing consultation throughout the planning process for the National Capital.

"(b) The National Capital Planning Commission shall be composed of—

"(1) ex officio, the Secretary of the Interior, the Secretary of Defense, the Administrator of the General Services Administration, the Commissioner, the Chairman of the District of Columbia Council, and the chairmen of the Committees on the District of Columbia of the Senate and the House of Representatives, or such alternates as each such person may from time to time designate to serve in his stead, and in addition,

"(2) five citizens with experience in city or regional planning, three of whom shall be appointed by the President and two of whom shall be appointed by the Commissioner. The citizen members appointed by the Commissioner shall be bona fide residents of the District of Columbia and of the three appointed by the President at least one shall be a bona fide resident of Virginia and at least one shall be a bona fide resident of Maryland. The terms of office of members appointed by the President shall be for six years, except that of the members first appointed, the President shall designate one to serve two years and one to serve four years. Members appointed by the Commissioner shall serve for four years. The members first appointed under this section shall assume their

office on January 2, 1975. Any person appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The citizen members shall each receive compensation at the rate of \$100 for each day such member is engaged in the actual performance of duties vested in the Commission in addition to reimbursement for necessary expenses incurred by them in the performance of such duties."

(b) Subsection (e) of section 2 of such Act of June 6, 1924 (D.C. Code, sec. 1-1002(e)), is amended by (1) inserting "Federal activities in the" immediately before "National Capital" in clause (1); and (2) striking out "and District Governments," and inserting in lieu thereof "government" in clause (2).

(c) Section 4 of such Act of June 6, 1924 (D.C. Code, sec. 1-1004), is amended as follows:

(1) The first sentence of subsection (a) of such section is amended to read as follows: "The Commission is hereby charged with the duty of preparing and adopting a comprehensive, consistent, and coordinated plan for the National Capital, which plan shall include the Commission's recommendations or proposals for Federal developments or projects in the environs, and those District elements, or amendments thereto, of the comprehensive plan adopted by the Council and with respect to which the Commission has not determined a negative impact to exist, which elements or amendments shall be incorporated into such comprehensive plan without change."

(2) The third sentence of subsection (a) of such section is amended by striking out "within the District of Columbia" and "or District".

(3) Subsections (b) and (c) of such section are repealed.

(d) Section 5 of such Act of June 6, 1924 (D.C. Code, sec. 1-1005), is amended as follows:

(1) Subsection (c) of such section is amended to read as follows:

"(c) The provisions of section 16 of the Act approved June 20, 1938 (D.C. Code, sec. 5-428), are extended to include public buildings erected by any agency of the Government of the District of Columbia within the boundaries of the central area of the District, as such central area may be defined and from time to time redefined by concurrent action of the Commission and the Council, except that the Commission shall transmit its approval or disapproval respecting any such building within thirty days after the day it was submitted to the Commission."

(2) The first and second sentences of subsection (e) of such section are amended to read as follows: "It is the intent of this section to obtain cooperation and correlation of effort between the various agencies of the Federal Government which are responsible for public developments and projects, including the acquisition of lands. These agencies, therefore, shall look to the Commission and utilize it as the central planning agency for the Federal activities in the National Capital region."

(e) Section 6 of such Act (D.C. Code, sec. 1-1006) is repealed.

(f) Section 7 of such Act (D.C. Code, sec. 1-1007) is amended to read as follows:

"Sec. 7. (a) The Commission shall recommend a six-year program of public works projects for the Federal Government which it shall review annually with the agencies concerned. To this end, each Federal agency shall submit to the Commission in the first quarter of each fiscal year a copy of its advance program of capital improvements within the National Capital and its environs.

"(b) The Commissioner shall submit to the Commission, by February 1 of each year, a copy of the multiyear capital improvements plan for the District developed by him under section 444 of the District of Columbia Self-Government and Governmental Reorganization Act. The Commission shall have thirty days within which to comment upon such plan but shall have no authority to change or disapprove of such plan."

(g) The first sentence of subsection (a) of section 8 of such Act of June 6, 1924 (D.C. Code, sec. 1-1008(a)), is amended to read as follows: "The Commission may make a report and recommendation to the Zoning Commission of the District of Columbia, as provided in section 5 of the Act of March 1, 1920 (D.C. Code, sec. 5-417), on pro-

posed amendments of the zoning regulations and maps as to the relation, conformity, or consistency of such amendments with the comprehensive plan for the National Capital."

DISTRICT OF COLUMBIA MANPOWER ADMINISTRATION

SEC. 204. (a) All functions of the Secretary of Labor (hereafter in this section referred to as the "Secretary") under section 3 of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49-49k), with respect to the maintenance of a public employment service for the District, are transferred to the Commissioner. After the effective date of this transfer, the Secretary shall maintain with the District the same relationship with respect to a public employment service in the District, including the financing of such service, as he has with the States (with respect to a public employment service in the States) generally.

(b) The Commissioner is authorized and directed to establish and administer a public employment service in the District and to that end he shall have all necessary powers to cooperate with the Secretary in the same manner as a State under the Act of June 6, 1933, specified in subsection (a).

(c) (1) Section 3(a) of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49b(a)), is amended by striking out "to maintain a public employment service for the District of Columbia".

(2) Section 3(b) of such Act (29 U.S.C. 49b(b)) is amended by inserting "the District of Columbia," immediately after "Guam,".

(d) All functions of the Secretary and of the Director of Apprenticeship under the Act entitled "An Act to provide for voluntary apprenticeship in the District of Columbia", approved May 20, 1946 (D.C. Code, secs. 36-121-36-133), are transferred to and shall be exercised by the Commissioner. The office of Director of Apprenticeship provided for in section 3 of such Act (D.C. Code, sec. 36-123) is abolished.

(e) All functions of the Secretary under chapter 81 of title 5 of the United States Code, with respect to the processing of claims filed by employees of the Government of the District for compensation for work injuries, are transferred to and shall be exercised by the Commissioner, effective the day after the day on which the District establishes an independent personnel system or systems.

(f) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available in connection with functions transferred to the Commissioner by the provisions of this section, as the Director of the Federal Office of Management and Budget shall determine, are authorized to be transferred from the Secretary to the Commissioner.

(g) Any employee in the competitive service of the United States transferred to the government of the District under the provisions of this section shall retain all the rights, benefits, and privileges pertaining thereto held prior to such transfer.

(h) The first section of the Act of August 16, 1937 (29 U.S.C. 50 et seq.) (relating to the welfare of apprentices), is amended by inserting at the end thereof "For the purposes of this Act the term 'State' shall include the District of Columbia." (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(1), 88 Stat. 793.)

TITLE III—DISTRICT CHARTER PREAMBLE LEGISLATIVE POWER, AND CHARTER AMENDING PROCEDURE

DISTRICT CHARTER PREAMBLE

SEC. 301. The charter for the District of Columbia set forth in title IV shall establish the means of governance of the District following its acceptance by a majority of the registered qualified electors of the District voting thereon in the charter referendum held with respect thereto.

LEGISLATIVE POWER

SEC. 302. Except as provided in sections 601, 602, and 603, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this Act subject to all the restrictions and limitations imposed upon the States by the tenth section of the first article of the Constitution of the United States.

CHARTER AMENDING PROCEDURE

SEC. 303. (a) The charter set forth in title IV (including any provision of law amended by such title), except sections 401(a) and 421(a), and part C of such title, may be amended by an act passed by the Council and ratified by a majority of the registered qualified electors of the District voting in the referendum held for such ratification. The Chairman of the Council shall submit all such acts to the Speaker of the House of Representatives and the President of the Senate on the day the Board of Elections and Ethics certifies that such act was ratified by a majority of the registered qualified electors voting thereon in such referendum.

(b) An amendment to the charter ratified by the registered qualified electors shall take effect only if within thirty-five calendar days (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) of the date such amendment was submitted to the Congress both Houses of Congress adopt a concurrent resolution, according to the procedures specified in section 604 of this Act, approving such amendment.

(c) The Board of Elections and Ethics shall prescribe such rules as are necessary with respect to the distribution and signing of petitions and the holding of elections for ratifying amendments to title IV of this Act according to the procedures specified in subsection (a).

(d) The amending procedure provided in this section may not be used to enact any law or affect any law with respect to which the Council may not enact any act, resolution, or rule under the limitations specified in sections 601, 602, and 603. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

TITLE IV—THE DISTRICT CHARTER

PART A—THE COUNCIL

Subpart 1—Creation of the Council

CREATION AND MEMBERSHIP

SEC. 401. (a) There is established a Council of the District of Columbia; and the members of the Council shall be elected by the registered qualified electors of the District.

(b) (1) The Council established under subsection (a) shall consist of thirteen members elected on a partisan basis. The Chairman and four members shall be elected at large in the District, and eight members shall be elected one each from the eight election wards established, from time to time, under the District of Columbia Election Act. The term of office of the members of the Council shall be four years, except as provided in paragraph (3), and shall begin at noon on January 2 of the year following their election.

(2) In the case of the first election held for the office of member of the Council after the effective date of this title, not more than two of the at-large members (excluding the Chairman) shall be nominated by the same political party. Thereafter, a political party may nominate a number of candidates for the office of at-large member of the Council equal to one less than the total number of at-large members (excluding the Chairman) to be elected in such election.

(3) To fill a vacancy in the Office of Chairman, the Board of Elections and Ethics shall hold a special election in the District on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Chairman to fill a vacancy in the Office of Chairman shall take office

on the day in which the Board of Elections and Ethics certifies his election, and shall serve as Chairman only for the remainder of the term during which such vacancy occurred. When the Office of Chairman becomes vacant, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as Chairman pro tempore until the election of a new Chairman.

(4) Of the members first elected after the effective date of this title, the Chairman and two members elected at-large and four of the members elected from election wards shall serve for four-year terms; and two of the at-large members and four of the members elected from election wards shall serve for two-year terms. The members to serve the four-year terms and the members to serve the two-year terms shall be determined by the Board of Elections and Ethics by lot, except that not more than one of the at-large members nominated by any political party shall serve for any such four-year term.

(c) The Council may establish and select such other officers and employees as it deems necessary and appropriate to carry out the functions of the Council.

(d) (1) In the event of a vacancy in the Council of a member elected from a ward, the Board of Elections and Ethics shall hold a special election in such ward to fill such vacancy on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this subsection. The person elected as a member to fill a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred.

(2) In the event of a vacancy in the office of Mayor, and if the Chairman becomes a candidate for the office of Mayor to fill such vacancy, the office of Chairman shall be deemed vacant as of the date of the filing of his candidacy. In the event of a vacancy in the Council of a member elected at large, other than a vacancy in the office of Chairman, who is affiliated with a political party, the central committee of such political party shall appoint a person to fill such vacancy, until the Board of Elections and Ethics can hold a special election to fill such vacancy, and such special election shall be held on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise be held under the provision of this subsection. The person appointed to fill such vacancy shall take office on the date of his appointment and shall serve as a member of the Council until the day on which the Board certifies the election of the member elected to fill such vacancy in either a special election or a general election. The person elected as a member to fill such a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred. With respect to a vacancy on the Council of a member elected at large who is not affiliated with any political party, the Council shall appoint a similarly nonaffiliated person to fill such vacancy until such vacancy can be filled in a special election in the manner prescribed in this paragraph. Such person appointed by the Council shall take office and serve as a member at the same time and for the same term as a member appointed by a central committee of a political party.

(3) Notwithstanding any other provision of this section, at no time shall there be more than three members (including the Chairman) serving at large on the Council who are affiliated with the same political party. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458; Aug. 29, 1974, Pub. L. 93-395, § 1(2), 88 Stat. 793.)

QUALIFICATIONS FOR HOLDING OFFICE

SEC. 402. No person shall hold the office of member of the Council, including the office of Chairman, unless he (a) is a qualified elector, (b) is domiciled in the District and if he is nominated for election from a particular ward, resides in the ward from which he is nominated, (c) has resided and been domiciled in the District for one year immediately preceding the day on which the general or special election for such office is to be held, and (d) holds no public office (other than his employment in and position as a member of the Council), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall prohibit any such person, while a member of the Council, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a Reserve component of an armed force of the United States other than a member serving on active duty under a call for more than thirty days. A member of the Council shall forfeit his office upon failure to maintain the qualifications required by this section, and, in the case of the Chairman, section 403(c).

COMPENSATION

SEC. 403. (a) Each member of the Council shall receive compensation, payable in periodic installments, at a rate equal to the maximum rate as may be established from time to time for grade 12 of the General Schedule under section 5332 of title 5 of the United States Code. On and after the end of the two-year period beginning on the day the members of the Council first elected under this Act take office, the Council may, by act, increase or decrease such rate of compensation. Such change in compensation, upon enactment by the Council in accordance with the provisions of this Act, shall apply with respect to the term of members of the Council beginning after the date of enactment of such change.

(b) All members of the Council shall receive additional allowances for actual and necessary expenses incurred in the performance of their duties of office as may be approved by the Council.

(c) The Chairman shall receive, in addition to the compensation to which he is entitled as a member of the Council, \$10,000 per annum, payable in equal installments, for each year he serves as Chairman, but the Chairman shall not engage in any employment (whether as an employee or as a self-employed individual) or hold any position (other than his position as Chairman), for which he is compensated in an amount in excess of his actual expenses in connection therewith.

POWERS OF THE COUNCIL

SEC. 404. (a) Subject to the limitations specified in title VI of this Act, the legislative power granted to the District by this Act is vested in and shall be exercised by the Council in accordance with this Act. In addition, except as otherwise provided in this Act, all functions granted to or imposed upon, or vested in or transferred to the District of Columbia Council, as established by Reorganization Plan Numbered 3 of 1967, shall be carried out by the Council in accordance with the provisions of this Act.

(b) The Council shall have authority to create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality.

(c) The Council shall adopt and publish rules of procedures which shall include provisions for adequate public notification of intended actions of the Council.

(d) Every act shall be published and codified upon becoming law as the Council may direct.

(e) An act passed by the Council shall be presented by the Chairman of the Council to the Mayor, who shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him, either approve or disapprove such act. If the Mayor shall approve such act, he shall indicate the same by affixing his signature thereto, and such act shall become law subject to

the provisions of section 602(c). If the Mayor shall disapprove such act, he shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him, return such act to the Council setting forth in writing his reasons for such disapproval. If any act so passed shall not be returned to the Council by the Mayor within ten calendar days after it shall have been presented to him, the Mayor shall be deemed to have approved it, and such act shall become law subject to the provisions of section 602(c). If, within thirty calendar days after an act has been timely returned by the Mayor to the Council with his disapproval, two-thirds of the members of the Council present and voting vote to reenact such act, the act so reenacted shall be transmitted by the Chairman to the President of the United States. Subject to the provisions of section 602(c), such act, except any act of the Council submitted to the President in accordance with the Budget and Accounting Act, 1921 [31 U.S.C. 1 et seq.], shall become law at the end of the thirty day period beginning on the date of such transmission, unless during such period the President disapproves such act.

(f) In the case of any budget act adopted by the Council pursuant to section 446 of this Act and submitted to the Mayor in accordance with subsection (e) of this section, the Mayor shall have power to disapprove any items or provisions, or both, of such act and approve the remainder. In any case in which the Mayor so disapproves of any item or provision, he shall append to the act when he signs it a statement of the item or provision which he disapproves, and shall, within such ten-day period, return a copy of the act and statement with his objections to the Council. If, within thirty calendar days after any such item or provision so disapproved has been timely returned by the Mayor to the Council, two-thirds of the members of the Council present and voting vote to reenact any such item or provision, such item or provision so reenacted shall be transmitted by the Chairman to the President of the United States. In any case in which the Mayor fails to timely return any such item or provision so disapproved to the Council, the Mayor shall be deemed to have approved such item or provision not returned, and such item or provision not returned shall be transmitted by the Chairman to the President of the United States.

Subpart 2—Organization and Procedure of the Council

THE CHAIRMAN

SEC. 411. (a) The Chairman shall be the presiding officer of the Council.

(b) When the Office of Mayor is vacant, the Chairman shall act in his stead. While the Chairman is Acting Mayor he shall not exercise any of his authority as Chairman or member of the Council.

ACTS, RESOLUTIONS, AND REQUIREMENTS FOR QUORUM

SEC. 412. (a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days. Resolutions shall be used to express simple determinations, decisions, or directions of the Council of a special or temporary character.

(b) A special election may be called by resolution of the Council to present for an advisory referendum vote of the people any proposition upon which the Council desires to take action.

(c) A majority of the Council shall constitute a quorum for the lawful convening of any meeting and for the transaction of business of the Council, except a lesser number may hold hearings.

INVESTIGATIONS BY THE COUNCIL

SEC. 413. (a) The Council, or any committee or person authorized by it, shall have power to investigate any matter relating to the affairs of the District, and for that purpose may require the attendance and testimony of witnesses and the production of books, papers, and other evidence. For such purpose any member of the Council (if the Council is conducting the inquiry) or any member of the committee may issue subpoenas and administer oaths upon resolution adopted by the Council or committee, as appropriate.

(b) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Council by resolution may refer the matter to the Superior Court of the District of Columbia, which may by order require such person to appear and give or produce testimony or books, papers, or other evidence, bearing upon the matter under investigation. Any failure to obey such order may be punished by such Court as a contempt thereof as in the case of failure to obey a subpoena issued, or to testify, in a case pending before such Court.

PART B—THE MAYOR

ELECTION, QUALIFICATIONS, VACANCY, AND COMPENSATION

SEC. 421. (a) There is established the Office of Mayor of the District of Columbia; and the Mayor shall be elected by the registered qualified electors of the District.

(b) The Mayor established by subsection (a) shall be elected, on a partisan basis, for a term of four years beginning at noon on January 2 of the year following his election.

(c) (1) No person shall hold the Office of Mayor unless he (A) is a qualified elector, (B) has resided and been domiciled in the District for one year immediately preceding the day on which the general or special election for Mayor is to be held, and (C) is not engaged in any employment (whether as an employee or as a self-employed individual) and holds no public office or position (other than his employment in and position as Mayor), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall be construed as prohibiting such person, while holding the Office of Mayor, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a reserve component of an armed force of the United States other than a member serving on active duty under a call for more than thirty days. The Mayor shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) To fill a vacancy in the Office of Mayor, the Board of Elections and Ethics shall hold a special election in the District on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Mayor to fill a vacancy in the Office of Mayor shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as Mayor only for the remainder of the term during which such vacancy occurred. When the Office of Mayor becomes vacant the Chairman shall become Acting Mayor and shall serve from the date such vacancy occurs until the date on which the Board of Elections and Ethics certifies the election of the new Mayor at which time he shall again become Chairman. While the Chairman is Acting Mayor, the Chairman shall receive the compensation regularly paid the Mayor, and shall receive no compensation as Chairman or member of the Council. While the Chairman is Acting Mayor, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as chairman pro tempore, until the return of the regularly elected Chairman.

(d) The Mayor shall receive compensation payable in equal installments, at a rate equal to the maximum rate, as may be established from time to time, for level

III of the Executive Schedule in section 5314 of title 5 of the United States Code. Such rate of compensation may be increased or decreased by act of the Council. Such change in such compensation, upon enactment by the Council in accordance with the provisions of this Act, shall apply with respect to the term of Mayor next beginning after the date of such change. In addition, the Mayor may receive an allowance, in such amount as the Council may from time to time establish, for official, reception, and representation expenses, which he shall certify in reasonable detail to the Council. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

POWERS AND DUTIES

SEC. 422. The executive power of the District shall be vested in the Mayor who shall be the chief executive officer of the District government. In addition, except as otherwise provided in this Act, all functions granted to or vested in the Commissioner of the District of Columbia, as established under Reorganization Plan Numbered 3 of 1967, shall be carried out by the Mayor in accordance with this Act. The Mayor shall be responsible for the proper execution of all laws relating to the District, and for the proper administration of the affairs of the District coming under his jurisdiction or control, including but not limited to the following powers, duties, and functions:

(1) The Mayor may designate the officer or officers of the executive department of the District who may, during periods of disability or absence from the District of the Mayor execute and perform the powers and duties of the Mayor.

(2) The Mayor shall administer all laws relating to the appointment, promotion, discipline, separation, and other conditions of employment of personnel in the office of the Mayor, personnel in executive departments of the District, and members of boards, commissions, and other agencies, who, under laws in effect on the date immediately preceding the effective date of section 711(a) of this Act, were subject to appointment and removal by the Commissioner of the District of Columbia. All actions affecting such personnel and such members shall, until such time as legislation is enacted by the Council superseding such laws and establishing a permanent District government merit system, pursuant to paragraph (3), continue to be subject to the provisions of Acts of Congress relating to the appointment, promotion, discipline, separation, and other conditions of employment applicable to officers and employees of the District government, to section 713(d) of this Act, and where applicable, to the provisions of the joint agreement between the Commissioners and the Civil Service Commission authorized by Executive Order Numbered 5491 of November 18, 1930, relating to the appointment of District personnel. He shall appoint or assign persons to positions formerly occupied, ex-officio, by the Commissioner of the District of Columbia or by the Assistant to the Commissioner and shall have power to remove such persons from such positions. The officers and employees of each agency with respect to which legislative power is delegated by this Act and which immediately prior to the effective date of section 711(a) of this Act, was not subject to the administrative control of the Commissioner of the District, shall continue to be appointed and removed in accordance with applicable laws until such time as such laws may be superseded by legislation passed by the Council establishing a permanent District government merit system pursuant to paragraph (3).

(3) The Mayor shall administer the personnel functions of the District covering employees of all District departments, boards, commissions, offices and agencies, except as otherwise provided by this Act. Personnel legislation enacted by Congress prior to or after the effective date of this section, including, without limitation, legislation relating to appointments, promotions, discipline, separations, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance, and veterans' preference applicable to employees of the District government as set forth in section 714(c), shall continue to be applicable until such time as the Council shall, pursuant to this section, provide for coverage under a District government merit system. The District govern-

ment merit system shall be established by act of the Council. The system may provide for continued participation in all or part of the Federal Civil Service System and shall provide for persons employed by the District government immediately preceding the effective date of such system personnel benefits, including but not limited to pay tenure, leave, residence, retirement, health and life insurance, and employee disability and death benefits, all at least equal to those provided by legislation enacted by Congress, or regulation adopted pursuant thereto, and applicable to such officers and employees immediately prior to the effective date of the system established pursuant to this Act. The District government merit system shall take effect not earlier than one year nor later than five years after the effective date of this section.

(4) The Mayor shall, through the heads of administrative boards, offices, and agencies, supervise and direct the activities of such boards, offices, and agencies.

(5) The Mayor may submit drafts of acts to the Council.

(6) The Mayor may delegate any of his functions (other than the function of approving or disapproving acts passed by the Council or the function of approving contracts between the District and the Federal Government under section 731) to any officer, employee, or agency of the executive office of the Mayor, or to any director of an executive department who may, with the approval of the Mayor, make a further delegation of all or a part of such functions to subordinates under his jurisdiction.

(7) The Mayor shall appoint a City Administrator, who shall serve at the pleasure of the Mayor. The City Administrator shall be the chief administrative officer of the Mayor, and he shall assist the Mayor in carrying out his functions under this Act, and shall perform such other duties as may be assigned to him by the Mayor. The City Administrator shall be paid at a rate established by the Mayor, not to exceed level IV of the Executive Schedule established under section 5315 of title 5 of the United States Code.

(8) The Mayor may propose to the executive or legislative branch of the United States Government legislation or other action dealing with any subject whether or not falling within the authority of the District government, as defined in this Act.

(9) The Mayor, as custodian thereof, shall use and authenticate the corporate seal of the District in accordance with law.

(10) The Mayor shall have the right, under rules to be adopted by the Council, to be heard by the Council or any of its committees.

(11) The Mayor is authorized to issue and enforce administrative orders, not inconsistent with this or any other Act of the Congress or any act of the Council, as are necessary to carry out his functions and duties.

(12) The Mayor may reorganize the offices, agencies, and other entities within the executive branch of the government of the District by submitting to the Council a detailed plan of such reorganization. Such a reorganization plan shall be valid only if the Council does not adopt, within sixty days (excluding Saturdays, Sundays, and holidays) after such reorganization plan is submitted to it by the Mayor, a resolution disapproving such reorganization.

MUNICIPAL PLANNING

SEC. 423. (a) The Mayor shall be the central planning agency for the District. He shall be responsible for the coordination of planning activities of the municipal government and the preparation and implementation of the District's elements of the comprehensive plan for the National Capital which may include land use elements, urban renewal and redevelopment elements, a multi-year program of municipal public works for the District, and physical, social, economic, transportation, and population elements. The Mayor's planning responsibility shall not extend to Federal and international projects and developments in the District, as determined by the National Capital Planning Commission, or to the United States Capitol buildings and grounds as defined in sections 1 and 16 of the Act of July 31, 1946 (40 U.S.C. 193a, 193m) [D.C. Code, secs. 9-118, 9-132], or to any extension thereof or addition thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out

his responsibilities under this section, the Mayor shall establish procedures for citizen involvement in the planning process and for appropriate meaningful consultation with any State or local government or planning agency in the National Capital region affected by an aspect of a proposed District element of the comprehensive plan (including amendments thereto) affecting or relating to the District.

(b) The Mayor shall submit the District's elements and amendments thereto, to the Council for revision or modification, and adoption by act, following public hearings. Following adoption and prior to implementation, the Council shall submit such elements and amendments thereto, to the National Capital Planning Commission for review and comment with regard to the impact of such elements or amendments on the interests and functions of the Federal Establishment, as determined by the Commission.

(c) Such elements and amendments thereto shall be subject to and limited by determinations with respect to the interests and functions of the Federal Establishment as determined in the manner provided by Act of Congress.

PART C—THE JUDICIARY

JUDICIAL POWERS

SEC. 431. (a) The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a United States court has exclusive jurisdiction pursuant to an Act of Congress. The Court of Appeals has jurisdiction of appeals from the Superior Court and, to the extent provided by law, to review orders and decisions of the Mayor, the Council, or any agency of the District. The District of Columbia courts shall also have jurisdiction over any other matters granted to the District of Columbia courts by other provisions of law.

(b) The chief judge of a District of Columbia court shall be designated by the District of Columbia Judicial Nominating Commission established by section 434 from among the judges of the court in regular active service, and shall serve as chief judge for a term of four years or until his successor is designated, except that his term as chief judge shall not extend beyond the chief judge's term as a judge of a District of Columbia court. He shall be eligible for redesignation as chief judge.

(c) A judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 [July 29, 1970] shall be appointed for a term of fifteen years subject to mandatory retirement at age seventy or removal, suspension, or involuntary retirement pursuant to section 432 and upon completion of such term, such judge shall continue to serve until reappointed or his successor is appointed and qualifies. A judge may be reappointed as provided in subsection (c) of section 433.

(d) (1) There is established a District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter referred to as the "Tenure Commission"). The Tenure Commission shall consist of seven members selected in accordance with the provisions of subsection (e). Such members shall serve for terms of six years, except that the member selected in accordance with subsection (e) (3) (A) shall serve for five years; of the members first selected in accordance with subsection (e) (3) (B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (e) (3) (C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (e) (3) (D) shall serve for six years; and the member first appointed in accordance with subsection (e) (3) (E) shall serve for six years. In making the respective first appointments according to subsections (e) (3) (B) and (e) (3) (C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(2) The Tenure Commission shall act only at meetings called by the Chairman or a majority of the Tenure Commission held after notice has been given of such meeting to all Tenure Commission members.

(3) The Tenure Commission shall choose annually, from among its members, a Chairman and such other officers as it may deem necessary. The Tenure Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Tenure Commission.

(4) The District government shall furnish to the Tenure Commission, upon the request of the Tenure Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Tenure Commission properly to perform its functions. Information so furnished shall be treated by the Tenure Commission as privileged and confidential.

(e) (1) No person may be appointed to the Tenure Commission unless he—

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least ninety days immediately prior to his appointment; and

(C) is not an officer or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 202¹ of title 5 of the United States Code); and (except with respect to the person appointed or designated according to subsection (b) (4) (D)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) any vacancy on the Tenure Commission shall be filled in the same manner is² which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of his predecessor.

(3) In addition to all other qualifications listed in this section, lawyer members of the Tenure Commission shall have the qualifications prescribed for persons appointed as judges of the District of Columbia courts. Members of the Tenure Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both or whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

No person may serve at the same time on both the District of Columbia Judicial Nomination Commission and on the District of Columbia Commission on Judicial Disabilities and Tenure.

(f) Any member of the Tenure Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(g) The Tenure Commission shall have the power to suspend, retire, or remove a judge of a District of Columbia court as provided in section 432.

REMOVAL, SUSPENSION, AND INVOLUNTARY RETIREMENT

SEC. 432. (a) (1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Tenure Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction

¹ So in original. Probably should be section "102".

² So in original. Probably should be "in".

tion of a crime which is punishable as a felony under Federal law or which would be a felony in the District.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Tenure Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Tenure Commission of—

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Tenure Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his judicial duties, and (2) the Tenure Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c) (1) A judge of a District of Columbia court shall be suspended, without salary—

(A) upon—

(i) proof of his conviction of a crime referred to in subsection (a) (1) which has not become final, or

(ii) the filing of an order of removal under subsection (a) (2) which has not become final; and

(B) upon the filing by the Tenure Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover his salary and all rights and privileges of his office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as he may be entitled, upon the filing by the Tenure Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover his judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of his office.

(3) A judge of a District of Columbia court shall be suspended from all or part of his judicial duties, with salary, if the Tenure Commission, upon concurrence of five members, (A) orders a hearing for the removal or retirement of the judge pursuant to this subchapter and determines that his suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Tenure Commission) but in no event later than the termination of all appeals.

NOMINATION AND APPOINTMENT OF JUDGES

SEC. 433. (a) Except as provided in section 434(d)(1), the President shall nominate, from the list of persons recommended to him by the District of Columbia Judicial Nomination Commission established under section 434, and, by and with the advice and consent of the Senate, appoint all judges of the District of Columbia courts.

(b) No person may be nominated or appointed a judge of a District of Columbia court unless he—

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding his nomination or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or the District of Columbia government;

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to his nomination, and shall retain such residency as long as he serves as such judge, except judges appointed prior to the effective date of this part who retain residency as required by section 1501(a) of title 11 of the District of Columbia Code shall not be required to be residents of the District to be eligible for reappointment or to serve any term to which reappointed;

(4) is recommended to the President, for such nomination and appointment, by the District of Columbia Judicial Nomination Commission; and

(5) has not served, within a period of two years prior to his nomination, as a member of the Tenure Commission, or of the District of Columbia Judicial Nomination Commission.

(c) Not less than three months prior to the expiration of his term of office, any judge of the District of Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of his term of office and shall be filled by appointment as provided in subsections (a) and (b). If a declaration is so filed, the Tenure Commission shall, not less than thirty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be exceptionally well qualified or well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the re-nomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the re-nomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court.

DISTRICT OF COLUMBIA JUDICIAL NOMINATION COMMISSION

SEC. 434. (a) There is established for the District of Columbia the District of Columbia Judicial Nomination Commission (hereafter in this section referred to as the "Commission"). The Commission shall consist of seven members selected in accordance with the provisions of subsection (b). Such member shall serve for terms of six years, except that the member selected in accordance with subsection (b) (4) (A) shall serve for five years; of the members first selected in accordance with subsection (b) (4) (B), one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (b) (4) (C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (b) (4) (D) shall serve for six years; and the member first appointed in accordance with subsection (b) (4) (E) shall serve for six years. In making the respective first appointments according to subsections (b) (4) (B) and (b) (4) (C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(b) (1) No person may be appointed to the Commission unless he—

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least 90 days immediately prior to his appointment; and

(C) is not a member, officer, or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 202¹ of title 5 of the United States Code); and (except with respect to the person appointed or designated according to subsection (b) (4) (D)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of his predecessor.

(3) It shall be the function of the Commission to submit nominees for appointment to positions as judges of the District of Columbia courts in accordance with section 433 of this Act.

(4) In addition to all other qualifications listed in this section, lawyer members of the Commission shall have the qualifications prescribed for persons appointed as judges for the District of Columbia courts. Members of the Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

(5) Any member of the Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(c) (1) The Commission shall act only at meetings called by the Chairman or a majority of the Commission held after notice has been given of such meeting to all Commission members.

(2) The Commission shall choose annually, from among its members, a Chairman, and such other officers as it may deem necessary. The Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Commission.

(3) The District government shall furnish to the Commission, upon the request of the Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Commission properly to perform its function. Information so furnished shall be treated by the Commission as privileged and confidential.

(d) (1) In the event of a vacancy in any position of the judge of a District of Columbia court, the Commission shall, within thirty days following the occurrence of such vacancy, submit to the President, for possible nomination and appointment, a list of three persons for each vacancy. If more than one vacancy exists at one given time, the Commission must submit lists in which no person is named more than once and the President may select more than one nominee from one list. Whenever a vacancy will occur by reason of the expiration of such a judge's term of office, the Commission's list of nominees shall be submitted to the President not less than thirty days prior to the occurrence of such vacancy. In the event the President fails to nominate, for Senate confirmation, one of the persons on the list submitted to him under this section within sixty days after receiving such list, the Commission shall nominate, and with the advice and consent of the Senate, appoint one of those persons to fill the vacancy

for which such list was originally submitted to the President.

(2) In the event any person recommended by the Commission to the President requests that his recommendation be withdrawn, dies, or in any other way becomes disqualified to serve as a judge of the District of Columbia courts, the Commission shall promptly recommend to the President one person to replace the person originally recommended.

(3) In no instance shall the Commission recommend any person, who in the event of timely nomination following a recommendation by the Commission, does not meet, upon such nomination, the qualifications specified in section 433.

PART D—DISTRICT BUDGET AND FINANCIAL MANAGEMENT

Subpart 1—Budget and Financial Management

FISCAL YEAR

SEC. 441. The fiscal year of the District shall, beginning on October 1, 1976, commence on the first day of October of each year and shall end on the thirtieth day of September of the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(3), 88 Stat. 793.)

SUBMISSION OF ANNUAL BUDGET

SEC. 442. (a) At such time as the Council may direct, the Mayor shall prepare and submit to the Council each year, and make available to the public, an annual budget for the District of Columbia government which shall include—

(1) the budget for the forthcoming fiscal year in such detail as the Mayor determines necessary to reflect the actual financial condition of the District government for such fiscal year, and specify the agencies and purposes for which funds are being requested; and which shall be prepared on the assumption that proposed expenditures resulting from financial transactions undertaken on either an obligation or cash-outlay basis, for such fiscal year shall not exceed estimated resources from existing sources and proposed resources;

(2) an annual budget message which shall include supporting financial and statistical information on the budget for the forthcoming fiscal year and information on the approved budgets and expenditures for the immediately preceding three fiscal years;

(3) a multiyear plan for all agencies of the District government as required under section 443;

(4) a multiyear capital improvements plan for all agencies of the District government as required under section 444;

(5) a program performance report comparing actual performance of as many programs as is practicable for the last completed fiscal year against proposed goals for such programs for such year, and, in addition, presenting as many qualitative or quantitative measures of program effectiveness as possible (including results of statistical sampling or other special analyses), and indicating the status of efforts to comply with the reports of the District of Columbia Auditor and the Comptroller General of the United States;

(6) an issue analysis statement consisting of a reasonable number of issues, identified by the Council in its action on the budget in the preceding fiscal year, having significant revenue or budgetary implications, and other similar issues selected by the Mayor, which shall consider the cost and benefits of alternatives and the rationale behind action recommended or adopted; and

(7) a summary of the budget for the forthcoming fiscal year designed for distribution to the general public.

(b) The budget prepared and submitted by the Mayor shall include, but not be limited to, recommended expenditures at a reasonable level for the forthcoming fiscal year for the Council, the District of Columbia Auditor, the District of Columbia Board of Elections and Ethics, the District of Columbia Judicial Nomination Commission, the Zoning Commission of the District of Columbia, the Public Service Commission, the Armory Board, and the Commission on Judicial Disabilities and Tenure.

(c) The Mayor from time to time may prepare and submit to the Council such proposed supplemental or de-

¹So in original. Probably should be section "102".

iciency budget recommendations as in his judgment are necessary on account of laws enacted after transmission of the budget or are otherwise in the public interest. The Mayor shall submit with such proposals a statement of justifications, including reasons for their omission from the annual budget. Whenever such proposed supplemental or deficiency budget recommendations are in an amount which would result in expenditures in excess of estimated resources, the Mayor shall make such recommendations as are necessary to increase resources to meet such increased expenditures. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

MULTIYEAR PLAN

Sec. 443. The Mayor shall prepare and include in the annual budget a multiyear plan for all agencies included in the District budget, for all sources of funding, and for such program categories as the Mayor identifies. Such plan shall be based on the actual experience of the immediately preceding three fiscal years, on the approved current fiscal year budget, and on estimates for at least the four succeeding fiscal years. The plan shall include, but not be limited to, provisions identifying—

(1) future cost implications of maintaining programs at currently authorized levels, including anticipated changes in wage, salary, and benefit levels;

(2) future cost implications of all capital projects for which funds have already been authorized, including identification of the amount of already appropriated but unexpended capital project funds;

(3) future cost implications of new, improved, or expanded programs and capital project commitments proposed for each of the succeeding four fiscal years;

(4) the effects of current and proposed capital projects on future operating budget requirements;

(5) revenues and funds likely to be available from existing revenue sources at current rates or levels;

(6) the specific revenue and tax measures recommended for the forthcoming fiscal year and for the next following fiscal year necessary to balance revenues and expenditures;

(7) the actuarial status and anticipated costs and revenues of retirement systems covering District employees; and

(8) total debt service payments in each fiscal year in which debt service payments must be made for all bonds which have been or will be issued, and all loans from the United States Treasury which have been or will be received, to finance the total cost on a full funding basis of all projects listed in the capital improvements plan prepared under section 444; and for each such fiscal year, the percentage relationship of the total debt service payments (with payments for issued and proposed bonds and loans from the United States Treasury, received or proposed, separately identified) to the bonding limitation for the current and forthcoming fiscal year as specified in section 603 (b).

MULTIYEAR CAPITAL IMPROVEMENTS PLAN

Sec. 444. The Mayor shall prepare and include in the annual budget a multiyear capital improvements plan for all agencies of the District which shall be based upon the approved current fiscal year budget and shall include—

(1) the status, estimated period of usefulness, and total cost of each capital project on a full funding basis for which any appropriation is requested or any expenditure will be made in the forthcoming fiscal year and at least four fiscal years thereafter, including an explanation of change in total cost in excess of 5 per centum for any capital project included in the plan of the previous fiscal year;

(2) an analysis of the plan, including its relationship to other programs, proposals, or elements developed by the Mayor as the central planning agency for the District pursuant to section 423 of this Act;

(3) identification of the years and amounts in which bonds would have to be issued, loans made, and costs actually incurred on each capital project identified; and

(4) appropriate maps or other graphics.

DISTRICT OF COLUMBIA COURTS' BUDGET

Sec. 445. The District of Columbia courts shall prepare and annually submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures and

appropriations necessary for the maintenance and operation of the District of Columbia court system. All such estimates shall be forwarded by the Mayor to the Council, for its action pursuant to sections 446 and 603 (c), without revision but subject to his recommendations. Notwithstanding any other provision of this Act, the Council may comment or make recommendations concerning such annual estimates involving the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system submitted by such courts but shall have no authority under this Act to revise such estimates. The courts shall submit as part of their budgets both a multiyear plan and a multiyear capital improvements plan and shall submit a statement presenting qualitative and quantitative descriptions of court activities and the status of efforts to comply with reports of the District of Columbia Auditor and the Comptroller General of the United States.

ENACTMENT OF APPROPRIATIONS BY CONGRESS

Sec. 446. The Council, within fifty calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by the Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to the Congress. No amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provision of this Act, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this Act.

CONSISTENCY OF BUDGET, ACCOUNTING, AND PERSONNEL SYSTEMS

Sec. 447. The Mayor shall implement appropriate procedures to insure that budget, accounting, and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis. No employee shall be hired on a full-time or part-time basis unless such position is authorized by Act of Congress. Employees shall be assigned in accordance with the program, organization, and fund categories specified in the Act of Congress authorizing such position. Hiring of temporary employees and temporary employee transfers among programs shall be consistent with applicable Acts of Congress and reprogramming procedures to insure that costs are accurately associated with programs and sources of funding.

FINANCIAL DUTIES OF THE MAYOR

Sec. 448. Subject to the limitations in section 603, the Mayor shall have charge of the administration of the financial affairs of the District and to that end he shall—

(1) supervise and be responsible for all financial transactions to insure adequate control of revenues and resources and to insure that appropriations are not exceeded;

(2) maintain systems of accounting and internal control designed to provide—

(A) full disclosure of the financial results of the District government's activities,

(B) adequate financial information needed by the District government for management purposes,

(C) effective control over and accountability for all funds, property, and other assets,

(D) reliable accounting results to serve as the basis for preparing and supporting agency budget requests and controlling the execution of the budget;

(3) submit to the Council a financial statement in any detail and at such times as the Council may specify;

(4) submit to the Council, by November 1 of each fiscal year, a complete financial statement and report for the preceding fiscal year;

(5) supervise and be responsible for the assessment of all property subject to assessment and special assessments within the corporate limits of the District for taxation, prepare tax maps, and give such notice of taxes and special assessments, as may be required by law;

(6) supervise and be responsible for the levying and

collection of all taxes, special assessments, license fees, and other revenues of the District, as required by law, and receive all moneys receivable by the District from the Federal Government or from any court, agency, or instrumentality of the District;

(7) have custody of all public funds belonging to or under the control of the District, or any agency of the District government, and deposit all funds coming into his hands, in such depositories as may be designated and under such terms and conditions as may be prescribed by act of the Council;

(8) have custody of all investments and invested funds of the District government, or in possession of such government in a fiduciary capacity, and have the safekeeping of all bonds and notes of the District and the receipt and delivery of District bonds and notes for transfer, registration or exchange; and

(9) apportion the total of all appropriations and funds made available during the fiscal year for obligation so as to prevent obligation or expenditure thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such fiscal year, and with respect to all appropriations or funds not limited to a definite period, and all authorizations to create obligations by contract in advance of appropriations, apportion the total of such appropriations or funds or authorizations so as to achieve the most effective and economical use thereof.

ACCOUNTING SUPERVISION AND CONTROL

SEC. 449. The Mayor shall—

(a) prescribe the forms or receipts, vouchers, bills and claims to be used by all the agencies, offices, and instrumentalities of the District government;

(b) examine and approve all contracts, orders, and other documents by which the District government incurs financial obligations, having previously ascertained that money has been appropriated and allotted and will be available when the obligations shall become due and payable;

(c) audit and approve before payment all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government and with the advice of the legal officials of the District determine the regularity, legality, and correctness of such claims, demands, or charges; and

(d) perform internal audits of accounts and operations and agency records of the District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness of accounting systems, internal control, and related administrative practices of the respective agencies.

GENERAL AND SPECIAL FUNDS

SEC. 450. The general fund of the District shall be composed of those District revenues which on the effective date of this title are paid into the Treasury of the United States and credited either to the general fund of the District or its miscellaneous receipts, but shall not include any revenues which are applied by law to any special fund existing on the date of enactment of this title. The Council may from time to time establish such additional special funds as may be necessary for the efficient operation of the government of the District. All money received by any agency, officer, or employee of the District in its or his official capacity shall belong to the District government and shall be paid promptly to the Mayor for deposit in the appropriate fund.

CONTRACTS EXTENDING BEYOND ONE YEAR

SEC. 451. No contract involving expenditures out of an appropriation which is available for more than one year shall be made for a period of more than five years unless, with respect to a particular contract, the Council, by a two-thirds vote of its members present and voting, authorizes the extension of such period for such contract. Such contracts shall be made pursuant to criteria established by act of the Council.

ANNUAL BUDGET FOR THE BOARD OF EDUCATION

SEC. 452. With respect to the annual budget for the Board of Education in the District of Columbia, the Mayor and the Council may establish the maximum amount of funds which will be allocated to the Board,

but may not specify the purposes for which such funds may be expended or the amount of such funds which may be expended for the various programs under the jurisdiction of the Board of Education.

Subpart 2—Audit

DISTRICT OF COLUMBIA AUDITOR

SEC. 455. (a) There is established for the District of Columbia the Office of District of Columbia Auditor who shall be appointed by the Chairman, subject to the approval of a majority of the Council. The District of Columbia Auditor shall serve for a term of six years and shall be paid at a rate of compensation as may be established from time to time by the Council.

(b) The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he may prescribe. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents and records, the District of Columbia Auditor shall give due regard to generally accepted principles of auditing including the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices.

(c) The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit.

(d) The District of Columbia Auditor shall submit his audit reports to the Congress, the Mayor, and the Council. Such reports shall set forth the scope of the audits conducted by him and shall include such comments and information as the District of Columbia Auditor may deem necessary to keep the Congress, the Mayor, and the Council informed of the operations to which the reports relate, together with such recommendations with respect thereto as he may deem advisable.

(e) The Council shall make such report, together with such other material as it deems pertinent thereto, available for public inspection.

(f) The Mayor shall state in writing to the Council, within an appropriate time, what action he has taken to effectuate the recommendations made by the District of Columbia Auditor in his reports.

PART E—BORROWING

Subpart 1—Borrowing

DISTRICT'S AUTHORITY TO ISSUE AND REDEEM GENERAL OBLIGATION BONDS FOR CAPITAL PROJECTS

SEC. 461. (a) Subject to the limitations in section 603 (b), the District may incur indebtedness by issuing general obligation bonds to refund indebtedness of the District at any time outstanding and to provide for the payment of the cost of acquiring or undertaking its various capital projects. Such bonds shall bear interest, payable annually or semi-annually, at such rate and at such maturities as the Mayor, subject to the provisions of section 462 of this Act, may from time to time determine to be necessary to make such bonds marketable.

(b) The District may reserve the right to redeem any or all of its obligations before maturity in such manner and at such price as may be fixed by the Mayor prior to the issuance of such obligations.

CONTENTS OF BORROWING LEGISLATION

SEC. 462. The Council may by act authorize the issuance of general obligation bonds for the purposes specified in section 461. Such an act shall contain, at least, provisions—

(1) briefly describing each project to be financed by the act;

(2) identifying the Act authorizing each such project;

(3) setting forth the maximum amount of the principal of the indebtedness which may be incurred for each such project;

(4) setting forth the maximum rate of interest to be paid on such indebtedness;

(5) setting forth the maximum allowable maturity for the issue and the maximum debt service payable in any year; and

(6) setting forth, in the event that the Council determines in its discretion, to submit the question of issuing such bonds to a vote of the qualified voters of the District, the manner of holding such election, the manner of voting for or against the incurring of such indebtedness, and the form of ballot to be used at such election. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(4), 88 Stat. 793.)

PUBLICATION OF BORROWING LEGISLATION

SEC. 463. The Mayor shall publish any act authorizing the issuance of general obligation bonds at least once within five days after the enactment thereof, together with a notice of the enactment thereof in substantially the following form:

"NOTICE

"The following act (published herewith) authorizing the issuance of general obligation bonds, has become effective. The time within which a suit, action, or proceeding questioning the validity of such bonds can be commenced, will expire twenty days from the date of the first publication of this notice, as provided in the District of Columbia Self-Government and Governmental Reorganization Act.

_____,
"Mayor."

SHORT PERIOD OF LIMITATION

SEC. 464. At the end of the twenty-day period beginning on the date of publication of the notice of the enactment of an act authorizing the issuance of general obligation bonds without the submission of the proposition for the issuance thereof to the qualified voters, or upon the expiration of twenty days from the date of publication of the promulgation of the results of an election upon the proposition of issuing bonds, as the case may be—

(1) any recitals or statements of fact contained in such act or in the preambles or the titles thereof or in the results of the election of any proceedings in connection with the calling, holding, or conducting of election upon the issuance of such bonds shall be deemed to be true for the purpose of determining the validity of the bonds thereby authorized, and the District and all others interested shall thereafter be estopped from denying same;

(2) such act and all proceedings in connection with the authorization of the issuance of such bonds shall be conclusively presumed to have been duly and regularly taken, passed, and done by the District and the Board of Elections and Ethics in full compliance with the provisions of this Act and of all laws applicable thereto; and

(3) the validity of such act and said proceedings shall not thereafter be questioned by either a party plaintiff or a party defendant, and no court shall have jurisdiction in any suit, action, or proceeding questioning the validity of same, except in a suit, action, or proceeding commenced prior to the expiration of such twenty-day period. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

ACTS FOR ISSUANCE OF GENERAL OBLIGATION BONDS

SEC. 465. At the end of the twenty-day period specified in section 464, the Mayor may issue general obligation bonds as authorized pursuant to the provisions of sections 461 to 465. An issue of general obligation bonds is hereby defined to be all or any part of an aggregate principal amount of bonds authorized pursuant to such sections, but no indebtedness shall be deemed to have been incurred within the meaning of this Act until such bonds have been sold, delivered, and paid for, and then only to the extent of the principal amount of such bonds so sold and delivered. The bonds of each issue shall be payable in annual installments beginning not more than three years after the date of such bonds and ending not more than thirty years from such date. The amount of said issues to be payable in each year shall be so fixed that when the annual interest is added to the principal amount payable in each year, the total amount payable either serially or to a sinking fund shall be substantially equal. It shall be an immaterial variance if the difference between the largest and smallest amounts of principal and interest so payable during each fiscal year during the term of the general

obligation bonds does not exceed 3 per centum of the total authorized amount of such series. Such bonds and coupons may be executed by the facsimile signatures of the officer designated by the act authorizing such bonds, to sign the bonds, within the exception that at least one signature shall be manual. Such bonds may be issued in coupon form in the denomination of \$1,000, or \$1,000 and \$5,000, registrable as to principal only or as to both principal and interest, and if registered as to both principal and interest may be issuable in denominations of multiples of \$1,000. Such bonds and the interest thereon may be payable at such place or places within or without the District as the Council may determine. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(5), 88 Stat. 793.)

PUBLIC SALE

SEC. 466. All general obligation bonds issued under this part shall be sold at public sale upon sealed proposals after publication of a notice of such sale at least once not less than ten days prior to the date fixed for sale in a daily newspaper carrying municipal bond notices and devoted primarily to financial news or to the subject of State and municipal bonds published in the city of New York, New York, and in one or more newspapers of general circulation published in the District. Such notice shall state, among other things, that no proposal shall be considered unless there is deposited with the District as a downpayment a certified check or cashier's check for an amount equal to at least 2 per centum of the par amount of general obligation bonds bid for, and the Mayor shall reserve the right to reject any and all bids. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(6), 88 Stat. 793.)

Subpart 2—Short-Term Borrowing

BORROWING TO MEET APPROPRIATIONS

SEC. 471. In the absence of unappropriated available revenues to meet appropriations made pursuant to section 466, the Council may by act authorize the issuance of negotiable notes, in a total amount not to exceed 2 per centum of the total appropriations for the current fiscal year, each of which may be renewed from time to time, but all such notes and renewals thereof shall be paid not later than the close of the fiscal year following that in which such act becomes effective.

BORROWING IN ANTICIPATION OF REVENUES

SEC. 472. For any fiscal year, in anticipation of the collection or receipt of revenues of that fiscal year, the Council may by act authorize the borrowing of money by the execution of negotiable notes of the District, not to exceed in the aggregate at any time outstanding 20 per centum of the total anticipated revenue, each of which shall be designated "Revenue Note for the Fiscal Year 19____". Such notes may be renewed from time to time, but all such notes, together with the renewals, shall mature and be paid not later than the end of the fiscal year for which the original notes have been issued.

NOTES REDEEMABLE PRIOR TO MATURITY

SEC. 473. No notes issued pursuant to this part shall be made payable on demand, but any note may be made subject to redemption prior to maturity on such notice and at such time as may be stated in the note.

SALES OF NOTES

SEC. 474. All notes issued pursuant to this part may be sold at not less than par and accrued interest at private sale without previous advertising.

Subpart 3—Payment of Bonds and Notes

SPECIAL TAX

SEC. 481. (a) The act of the Council authorizing the issuance of general obligation bonds pursuant to this title, shall, where necessary, provide for the levy annually of a special tax or charge without limitation as to rate or amount in amounts which, together with other revenues of the District available and applicable for said purposes, will be sufficient to pay the principal of and interest on such bonds and the premium, if any, upon the redemption thereof, as the same respectively become due and payable, which tax shall be levied and collected at the same time and in the same manner as other District taxes are levied and collected, and when collected

shall be set aside in a sinking fund and irrevocably dedicated to the payment of such principal, interest, and premium.

(b) The full faith and credit of the District shall be and is hereby pledged for the payment of the principal of and the interest on all general obligation bonds and notes of the District hereafter issued pursuant to subparts 1, 2, and 3 of part E of this title whether or not such pledge be stated in such bonds or notes or in the act authorizing the issuance thereof.

(c) (1) As soon as practicable following the beginning of each fiscal year, the Mayor shall review the amounts of District revenues which have been set aside and deposited in a sinking fund as provided in subsection (a). Such review shall be carried out with a view to determining whether the amounts so set aside and deposited are sufficient to pay the principal of and interest on general obligation bonds issued pursuant to this title, and the premium (if any) upon the redemption thereof, as the same respectively become due and payable. To the extent that the Mayor determines that sufficient District revenues have not been so set aside and deposited, the Federal payment made for the fiscal year within which such review is conducted shall be first utilized to make up any deficit in such sinking fund.

(2) The Comptroller General of the United States shall make annual audits of the amounts set aside and deposited in the sinking fund.

Subpart 4—Tax Exemption; Legal Investment; Water Pollution; Reservoirs; Metro Contributions; and Revenue Bonds

TAX EXEMPTION

SEC. 485. Bonds and notes issued by the Council pursuant to this title and the interest thereon shall be exempt from all Federal and District taxation except estate, inheritance, and gift taxes.

LEGAL INVESTMENT

SEC. 486. Notwithstanding any restriction on the investment of funds by fiduciaries contained in any other law, all domestic insurance companies, domestic insurance associations, executors, administrators, guardians, trustees, and other fiduciaries within the District may legally invest any sinking funds, moneys, trust funds, or other funds belonging to them or under or within their control in any bonds issued pursuant to this title, it being the purpose of this section to authorize the investment in such bonds or notes of all sinking, insurance, retirement, compensation, pension, and trust funds. National banking associations are authorized to deal in, underwrite, purchase and sell, for their own accounts or for the accounts of customers, bonds and notes issued by the Council to the same extent as national banking associations are authorized by paragraph seven of section 5136 of the Revised Statutes (12 U.S.C. 24), to deal in, underwrite, purchase and sell obligations of the United States, States, or political subdivisions thereof. All Federal building and loan associations and Federal savings and loan associations; and banks, trust companies, building and loan associations, and savings and loan associations, domiciled in the District, may purchase, sell, underwrite, and deal in, for their own account or for the account of others, all bonds or notes issued pursuant to this title. Nothing contained in this section shall be construed as relieving any person, firm, association, or corporation from any duty of exercising due and reasonable care in selecting securities for purchase or investment.

WATER POLLUTION

SEC. 487. (a) The Mayor shall annually estimate the amount of the District's principal and interest expense which is required to service District obligations attributable to the Maryland and Virginia pro rata share of District sanitary sewage water works and other water pollution projects which provide service to the local jurisdictions in those States. Such amounts as determined by the Mayor pursuant to the agreements described in subsection (b) shall be used to exclude the Maryland and Virginia share of pollution projects cost from the limitation on the District's capital project obligations as provided in section 603(b).

(b) The Mayor shall enter into agreements with the States and local jurisdictions concerned for annual payments to the District of rates and charges for waste treatment services in accordance with the use and benefits made and derived from the operation of the said waste treatment facilities. Each such agreement shall require that the estimated amount of such rates and charges will be paid in advance, subject to adjustment after each year. Such rates and charges shall be sufficient to cover the cost of construction, interest on capital, operation and maintenance, and the necessary replacement of equipment during the useful life of the facility.

COST OF RESERVOIRS ON POTOMAC RIVER

SEC. 488. (a) The Mayor is authorized to contract with the United States, any State in the Potomac River Basin, any agency or political subdivision thereof, and any other competent State or local authority, with respect to the payment by the District to the United States, either directly or indirectly, of the District's equitable share of any part or parts of the non-Federal portion of the costs of any reservoirs authorized by the Congress for construction on the Potomac River or any of its tributaries. Every such contract may contain such provisions as the Mayor may deem necessary or appropriate.

(b) Unless hereafter otherwise provided by legislation enacted by the Council, all payments made by the District and all moneys received by the District pursuant to any contract made under the authority of this Act shall be paid from, or be deposited in, a fund designated by the Mayor. Charges for water delivered from the District water system for use outside the District may be adjusted to reflect the portions of any payments made by the District under contracts authorized by this Act which are equitably attributable to such use outside the District.

DISTRICT'S CONTRIBUTIONS TO THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

SEC. 489. Notwithstanding any provision of law to the contrary, beginning with fiscal year 1976 the District share of the cost of the Adopted Regional System described in the National Capital Transportation Act of 1969 (83 Stat. 320) [D.C. Code, sec. 1-1441 et seq.], may be payable from the proceeds of the sale of District general obligation bonds issued pursuant to this title.

REVENUE BONDS AND OTHER OBLIGATIONS

SEC. 490. (a) The Council may by act issue revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance or assist in the financing of undertakings in the areas of housing, health facilities, transit and utility facilities, recreational facilities, college and university facilities, and industrial and commercial development. Such bonds, notes, or other obligations shall be fully negotiable and payable, as to both principal and interest, solely from and secured solely by a pledge of the revenues realized from the property, facilities, developments, and improvements whose financing is undertaken by the issuance of such bonds, notes, or other obligations, including existing facilities to which such new facilities and improvements are related, which financing may be effected through loans made directly or indirectly (including the purchase of mortgages, in those cases described in subsection (b) of this section, notes, or other securities) to any public, quasi-public, or private corporation, partnership, association, person, or other legal entity.

(b) Except in the case of housing, recreation, commercial and industrial development, the property, facilities, developments, and improvements being financed may not be mortgaged as additional security for bonds, notes, or other obligations, but in no event shall any property owned by the District of Columbia or the United States be mortgaged for the purpose of this section.

(c) Any and all such bonds, notes, or other obligations shall not be general obligations of the District and shall not be a pledge of or involve the faith and credit or the taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as contained in section 602(a)(2).

(d) Any and all such bonds, notes, or other obligations shall be issued pursuant to an act of the Council without

the necessity of submitting the question of such issuance to the registered qualified electors of the District for approval or disapproval.

(e) Any such act may contain provisions—

(1) briefly describing the purpose for which such bond, note, or other obligation is to be issued;

(2) identifying the Act authorizing such purpose;

(3) prescribing the form, terms, provisions, manner or method of issuing and selling (including negotiated as well as competitive bid sale), and the time of issuance, of such bonds, notes, or other obligations; and

(4) prescribing any and all other details with respect to any such bonds, notes, or other obligations and the issuance and sale thereof.

The act may authorize and empower the Mayor to do any and all things necessary, proper, or expedient in connection with the issuance and sale of such notes, bonds, or other obligations authorized to be issued under the provisions of this section.

PART F—INDEPENDENT AGENCIES

BOARD OF ELECTIONS

SEC. 491. Section 3 of the District of Columbia Elections Act (D.C. Code, sec. 1-1103) is amended to read as follows:

"SEC. 3. (a) There is created a District of Columbia Board of Elections (hereafter in this section referred to as the 'Board'), to be composed of three members, no more than two of whom shall be of the same political party, appointed by the Mayor, with the advice and consent of the Council. Members shall be appointed to serve for terms of three years, except of the members first appointed under this Act. One member shall be appointed to serve for a one-year term, one member shall be appointed to serve for a two-year term, and one member shall be appointed to serve for a three-year term, as designated by the Mayor.

"(b) Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the member whose vacancy he is filling.

"(c) A member may be reappointed, and, if not reappointed, the member shall serve until his successor has been appointed and qualifies.

"(d) The Mayor shall, from time to time, designate the Chairman of the Board."

ZONING COMMISSION

SEC. 492. (a) The first section of the Act of March 1, 1920 (D.C. Code, sec. 5-412) is amended to read as follows: "That (a) to protect the public health, secure the public safety, and to protect property in the District of Columbia there is created a Zoning Commission for the District of Columbia, which shall consist of the Architect of the Capitol, the Director of the National Park Service, and three members appointed by the Mayor, by and with the advice and consent of the Council. Each member appointed by the Mayor shall serve for a term of four years, except of the members first appointed under this section—

"(1) one member shall serve for a term of two years, as determined by the Mayor;

"(2) one member shall serve for a term of three years, as determined by the Mayor; and

"(3) one member shall serve for a term of four years, as determined by the Mayor.

"(b) Members of the Zoning Commission appointed by the Mayor shall be entitled to receive compensation as determined by the Mayor, with the approval of a majority of the Council. The remaining members shall serve without additional compensation.

"(c) Members of the Zoning Commission appointed by the Mayor may be reappointed. Each member shall serve until his successor has been appointed and qualifies.

"(d) The Chairman of the Zoning Commission shall be selected by the members.

"(e) The Zoning Commission shall exercise all the powers and perform all the duties with respect to zoning in the District as provided by law."

(b) The Act of June 20, 1938 (D.C. Code, sec. 5-413, et seq.) is amended as follows:

(1) The first sentence of section 2 of such Act (D.C. Code, sec. 5-414) is amended by striking out "Such regu-

lations shall be made in accordance with a comprehensive plan and" and inserting in lieu thereof "Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital, and zoning regulations shall be".

(2) Section 5 of such Act (D.C. Code, sec. 5-417) is amended to read as follows:

"SEC. 5. (a) No zoning regulation or map, or any amendment thereto, may be adopted by the Zoning Commission until the Zoning Commission—

"(1) has held a public hearing, after notice, on such proposed regulation, map, or amendment; and

"(2) after such public hearing, submitted such proposed regulation, map, or amendment to the National Capital Planning Commission for comment and review.

If the National Capital Planning Commission fails to submit its comments regarding any such regulation, map, or amendment within thirty days after submission of such regulation, map, or amendment to it, then the Zoning Commission may proceed to act upon the proposed regulation, map, or amendment without further comment from the National Capital Planning Commission.

"(b) The notice required by clause (1) of subsection (a) shall be published at least thirty days prior to such public hearing and shall include a statement as to the time and place of the hearing and a summary of all changes in existing zoning regulations which would be made by adoption of the proposed regulation, map, or amendment. The Zoning Commission shall give such additional notice as it deems expedient and practicable. All interested persons shall be given a reasonable opportunity to be heard at such public hearing. If the hearing is adjourned from time to time, the time and place of reconvening shall be publicly announced prior to adjournment.

"(c) The Zoning Commission shall deposit with the National Capital Planning Commission all zoning regulations, maps, or amendments thereto, adopted by it."

PUBLIC SERVICE COMMISSION

SEC. 493. (a) There shall be a Public Service Commission whose function shall be to insure that every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminating charge for such facility or service is prohibited and is hereby declared unlawful.

(b) Paragraph 97(a) of section 8 of the Act of March 4, 1913 (making appropriations for the government of the District of Columbia) (D.C. Code, sec. 43-201), is amended as follows:

(1) The first sentence of such paragraph is amended to read as follows: "The Public Service Commission of the District of Columbia shall be composed of three commissioners appointed by the Mayor, by and with the advice and consent of the Council, except that the members (other than the Commissioner of the District of Columbia) serving as commissioners of such Commission on January 1, 1975, by virtue of their appointment by the President, by and with the advice and consent of the Senate, shall continue to serve until the expiration of the terms for which they were so appointed. The member first appointed by the Mayor, by and with the advice and consent of the Council, on or after January 2, 1975, shall serve until June 30, 1978."

(2) The third sentence of such paragraph is repealed.

(3) The sixth sentence of such paragraph is amended to read as follows: "No Commissioner shall, during his term of office, hold any other public office."

(4) The seventh sentence of such paragraph is amended by deleting "The Commissioners of the District of Columbia" and inserting in lieu thereof "The Mayor".

(5) The eighth sentence of such paragraph is amended to read as follows: "No person shall be eligible to the office of Commissioner of the Public Service Commission of the District of Columbia who has not been a bona fide resident of the District of

Columbia for a period of at least three years next preceding his appointment or who has voted or claimed residence elsewhere during such period.”.
(Amended Jan. 3, 1975, Pub. L. 93-635, § 17, 88 Stat. 2178.)

ARMORY BOARD

Sec. 494. The first sentence of section 2 of the Act of June 4, 1948 (D.C. Code, sec. 2-1702), is amended to read as follows: “There is established an Armory Board, to be composed of the commanding general of the District of Columbia Militia, and two other members appointed by the Mayor of the District of Columbia by and with the advice and consent of the Council of the District of Columbia. The members appointed by the Mayor shall each serve for a term of four years beginning on the date such member qualifies.”.

BOARD OF EDUCATION

Sec. 495. The control of the public schools in the District of Columbia is vested in a Board of Education to consist of eleven elected members, three of whom are to be elected at large, and one to be elected from each of the eight school election wards established under the District of Columbia Election Act. The election of the members of the Board of Education shall be conducted on a non-partisan basis and in accordance with such Act.

TITLE V—FEDERAL PAYMENT

DUTIES OF THE MAYOR, COUNCIL, AND FEDERAL OFFICE OF MANAGEMENT AND BUDGET

Sec. 501. (a) It shall be the duty of the Mayor in preparing an annual budget for the government of the District to develop meaningful intercity expenditure and revenue comparisons based on data supplied by the Bureau of the Census, and to identify elements of cost and benefits to the District which result from the unusual role of the District as the Nation's Capital. The results of the studies conducted by the Mayor under this subsection shall be made available to the Council and to the Federal Office of Management and Budget for their use in reviewing and revising the Mayor's request with respect to the level of the appropriation for the annual Federal payment to the District. Such Federal payment should operate to encourage efforts on the part of the government of the District to maintain and increase its level of revenues and to seek such efficiencies and economies in the management of its programs as are possible.

(b) The Mayor, in studying and identifying the costs and benefits to the District brought about by its role as the Nation's Capital, should to the extent feasible, among other elements, consider—

- (1) revenues unobtainable because of the relative lack of taxable commercial and industrial property;
- (2) revenues unobtainable because of the relative lack of taxable business income;
- (3) potential revenues that would be realized if exemptions from District taxes were eliminated;
- (4) net costs, if any, after considering other compensation for tax base deficiencies and direct and indirect taxes paid, of providing services to tax-exempt nonprofit organizations and corporate offices doing business only with the Federal Government;
- (5) recurring and nonrecurring costs of unreimbursed services to the Federal Government;
- (6) other expenditure requirements placed on the District by the Federal Government which are unique to the District;
- (7) benefits of Federal grants-in-aid relative to aid given other States and local governments;
- (8) recurring and nonrecurring costs of unreimbursed services rendered the District by the Federal Government; and
- (9) relative tax burden on District residents compared to that of residents in other jurisdictions in the Washington, District of Columbia, metropolitan area and in other cities of comparable size.

(c) The Mayor shall submit his request, with respect to the amount of an annual Federal payment, to the Council. The Council shall by act approve, disapprove, or modify the Mayor's request. After the action of the Council, the Mayor shall, by December 1 of each calendar year, in accordance with the provisions in the Budget

and Accounting Act, 1921 (31 U.S.C. 2), submit such request to the President for submission to the Congress. Each request regarding an annual Federal payment shall be submitted to the President seven months prior to the beginning of the fiscal year for which such request is made and shall include a request for an annual Federal payment for the next following fiscal year.

AUTHORIZATION OF APPROPRIATIONS

Sec. 502. Notwithstanding any other provision of law, there is authorized to be appropriated as the annual Federal payment to the District of Columbia for the fiscal year ending June 30, 1975, the sum of \$230,000,000; for the fiscal year ending June 30, 1976, the sum of \$254,000,000; for the fiscal year ending September 30, 1977, the sum of \$280,000,000; for the fiscal year ending September 30, 1978, and for each fiscal year thereafter, the sum of \$300,000,000. For the period July 1, 1976, through September 30, 1976, there is authorized to be appropriated a Federal payment of \$70,000,000. (Amended Aug. 29, 1974, Pub. L. 93-395, § 1(7), 88 Stat. 793.)

TITLE VI—RESERVATION OF CONGRESSIONAL AUTHORITY

RETENTION OF CONSTITUTIONAL AUTHORITY

Sec. 601. Notwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council.

LIMITATIONS ON THE COUNCIL

Sec. 602. (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to—

- (1) impose any tax on property of the United States or any of the several States;
- (2) lend the public credit for support of any private undertaking;
- (3) enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;
- (4) enact any act, resolution, or rule with respect to any provision of title 11 of the District of Columbia Code (relating to organization and jurisdiction of the District of Columbia courts);
- (5) impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District (the terms “individual” and “resident” to be understood for the purposes of this paragraph as they are defined in section 4 of title I of the District of Columbia Income and Franchise Tax Act of 1947) [D.C. Code, sec. 47-1551c];
- (6) enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5 of the Act of June 1, 1910 (D.C. Code, sec. 5-405), and in effect on the date of enactment of this Act;
- (7) enact any act, resolution, or regulation with respect to the Commission on Mental Health;
- (8) enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States attorney or the United States Marshal for the District of Columbia; or
- (9) enact any act, resolution, or rule with respect to any provision of title 23 of the District of Columbia Code (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 of the District of Columbia Code (relating to crimes and treatment of prisoners) during the twenty-four full calendar months immediately following the day on which the members of the Council first elected pursuant to this Act take office.

(b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any Federal agency, than was vested in the Commissioner prior to the effective date of title IV of this Act.

(c) (1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921 [31 U.S.C. 1 et seq.], any act which the Council determines according to section 412(a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this Act, the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and re-passed by two-thirds of the Council present and voting (and with respect to which the President has not sustained the Mayor's veto), and every act passed by the Council and allowed to become effective by the Mayor without his signature. Except as provided in paragraph (2), no such act shall take effect until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which either House is not in session) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act. The provisions of section 604, except subsections (d), (e), and (f) of such section, shall apply with respect to any concurrent resolution disapproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any Act codified in title 22, 23, or 24 of the District of Columbia Code, such act shall take effect at the end of the 30-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate only if during such 30-day period one House of Congress does not adopt a resolution disapproving such act. The provisions of section 604, relating to an expedited procedure for consideration of resolutions, shall apply to a simple resolution disapproving such act as specified in this paragraph.

BUDGET PROCESS; LIMITATIONS ON BORROWING AND SPENDING

SEC. 603. (a) Nothing in this Act shall be construed as making any change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the Federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission, examination, authorization, and appropriation of the total budget of the District of Columbia government.

(b) (1) No general obligation bonds (other than bonds to refund outstanding indebtedness) or Treasury capital project loans shall be issued during any fiscal year in an amount which would cause the amount of principal and interest required to be paid both serially and into a sinking fund in any fiscal year on the aggregate amounts of all outstanding general obligation bonds and such Treasury loans, to exceed 14 per centum of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year in which the bonds will be issued. Treasury capital project loans include all borrowings from the United States Treasury, except those funds advanced to the District by the Secretary of the Treasury under the provisions of section 2501, title 47 of the District of Columbia Code, as amended.

(2) Obligations incurred pursuant to the authority contained in the District of Columbia Stadium Act of 1957 (71 Stat. 619; D.C. Code title 2, chapter 17, subchapter II), and obligations incurred by the agencies transferred or established by sections 201 and 202, whether incurred before or after such transfer or estab-

lishment, shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in the preceding subsection.

(3) The 14 per centum limitation specified in paragraph (1) shall be calculated in the following manner:

(A) Determine the dollar amount equivalent to 14 per cent of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year for which the bonds will be issued.

(B) Determine the actual total amount of principal and interest to be paid in each fiscal year for all outstanding general obligation bonds and such Treasury loans.

(C) Determine the amount of principal and interest to be paid during each fiscal year over the term of the proposed general obligation bond or such Treasury loan to be issued.

(D) If in any one fiscal year the sum arrived at by adding subparagraphs (B) and (C) exceeds the amount determined under subparagraph (A), then the proposed general obligation bond or such Treasury loan in subparagraph (C) cannot be issued.

(c) The Council shall not approve any budget which would result in expenditures being made by the District Government, during any fiscal year, in excess of all resources which the Mayor estimates will be available from all funds available to the District for such fiscal year. The budget shall identify any tax increases which shall be required in order to balance the budget as submitted. The Council shall be required to adopt such tax increases to the extent its budget is approved. For the purposes of this section, the Council shall use a Federal payment amount not to exceed the amount authorized by Congress. In determining whether any such budget would result in expenditures so being made in excess of such resources, amounts included in the budget estimates of the District of Columbia courts in excess of the recommendations of the Council shall not be applicable.

(d) The Mayor shall not forward to the President for submission to Congress a budget which is not balanced according to the provision of subsection 603(c).

(e) Nothing in this Act shall be construed as affecting the applicability to the District government of the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665), the so-called Anti-Deficiency Act.

CONGRESSIONAL ACTION ON CERTAIN DISTRICT MATTERS

SEC. 604. (a) This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed a part of the rule of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rule (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) For the purpose of this section, "resolution" means only a concurrent resolution, the matter after the resolving clause of which is as follows: "That the _____ approves/disapproves of the action of the District of Columbia Council described as follows: _____.", the blank spaces therein being appropriately filled, and either approval or disapproval being appropriately indicated; but does not include a resolution which specifies more than one action.

(c) A resolution with respect to Council action shall be referred to the Committee on the District of Columbia of the House of Representatives, or the Committee on the District of Columbia of the Senate, by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(d) If the committee to which a resolution has been referred has not reported it at the end of twenty calendar

days after its introduction, it is in order to move to discharge the committee from further consideration of any other resolution with respect to the same Council action which has been referred to the committee.

(e) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(f) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same action.

(g) When the committee has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(h) Debate on the resolution shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(i) Motions to postpone made with respect to the discharge from committee or the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(j) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

TITLE VII—REFERENDUM; SUCCESSION IN GOVERNMENT; TEMPORARY PROVISIONS; MISCELLANEOUS; AMENDMENTS TO DISTRICT OF COLUMBIA ELECTION ACT; RULES OF CONSTRUCTION; AND EFFECTIVE DATES

PART A—CHARTER REFERENDUM

REFERENDUM

SEC. 701. On a date to be fixed by the Board of Elections,¹ not more than five months after the date of enactment of this Act, a referendum (in this part referred to as the "charter referendum") shall be conducted to determine whether the registered qualified electors of the District accept the charter set forth as title IV of this Act.

BOARD OF ELECTIONS AUTHORITY

SEC. 702. (a) The Board of Elections shall conduct the charter referendum and certify the results thereof as provided in this part.

(b) Notwithstanding the fact that such section does not otherwise take effect unless the charter is accepted under this title, the applicable provisions of part E of title VII of this Act shall govern the Board of Elections in the performance of its duties under this Act.

REFERENDUM BALLOT AND NOTICE OF VOTING

SEC. 703. (a) The charter referendum ballot shall contain the following, with a blank space appropriately filled: "The District of Columbia Self-Government and Governmental Reorganization Act, enacted _____ [Dec. 24, 1973], proposes to establish a charter for the governance of the District of Columbia, but provides that the charter shall take effect only if it is accepted by a majority of the registered qualified voters of the District voting on this issue.

"Indicate in one of the squares provided below whether you are for or against the charter.

☐ For the charter

☐ Against the charter.

"In addition, the Act referred to above authorizes the establishment of advisory neighborhood councils if a majority of the registered qualified voters of the District voting on this issue in this referendum vote for the establishment of such councils.

"Indicate in one of the squares provided below whether you are for or against the establishment of Advisory Neighborhood Councils.

☐ For Advisory Neighborhood Councils

☐ Against Advisory Neighborhood Councils."

(b) Voting may be by paper ballot or by voting machine. The Board of Elections may make such changes in the second and fourth paragraphs of the charter referendum ballot as it determines to be necessary to permit the use of voting machines if such machines are used.

(c) Not less than five days before the date of the charter referendum, the Board of Elections shall mail to each registered qualified elector (1) a sample of the charter referendum ballot, and (2) information showing the polling place of such elector and the date and hours of voting.

(d) Not less than one day before the charter referendum, the Board of Elections shall publish, in one or more newspapers of general circulation published in the District, a list of the polling places and the date and hours of voting. (Amended Apr. 24, 1974, Pub. L. 93-272, § 1, 88 Stat. 93.)

ACCEPTANCE OR NONACCEPTANCE OF CHARTER

SEC. 704. (a) If a majority of the registered qualified electors voting in the charter referendum vote for the charter, the charter shall be considered accepted as of the time the Board of Elections certifies the result of the charter referendum to the President of the United States, as provided in subsection (b).

(b) The Board of Elections shall, within a reasonable time, but in no event more than thirty days after the date of the charter referendum, certify the results of the charter referendum to the President of the United States and to the Secretary of the Senate and the Clerk of the House of Representatives.

PART B—SUCCESSION IN GOVERNMENT

ABOLISHMENT OF EXISTING GOVERNMENT AND TRANSFER OF FUNCTIONS

SEC. 711. The District of Columbia Council, the offices of Chairman of the District of Columbia Council, Vice Chairman of the District of Columbia Council, and the seven other members of the District of Columbia Council, and the offices of the Commissioner of the District of Columbia and Assistant to the Commissioner of the District of Columbia, as established by Reorganization Plan Numbered 3 of 1967, are abolished as of noon January 2, 1975. This subsection¹ shall not be construed to reinstate any governmental body or office in the District abolished in said plan or otherwise heretofore.

CERTAIN DELEGATED FUNCTIONS AND FUNCTIONS OF CERTAIN AGENCIES

SEC. 712. No function of the District of Columbia Council (established under Reorganization Plan Numbered 3 of 1967) or of the Commissioner of the District of Columbia which such District of Columbia Council or Commissioner has delegated to an officer, employee, or agency (including any body of or under such agency) of the District, nor any function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the District Public Service Commission, Zoning Advisory Council, Board of Zoning Adjustment, Office of the Recorder of Deeds, or Armory Board, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting.

¹ May 7, 1974.

¹ So in original. Probably should be "section".

TRANSFER OF PERSONNEL, PROPERTY, AND FUNDS

SEC. 713. (a) In each case of the transfer, by any provision of this Act, of functions to the Council, to the Mayor, or to any agency or officer, there are hereby authorized to be transferred (as of the time of such transfer of functions) to the Council, to the Mayor, to such agency, or to the agency of which such officer is the head, for use in the administration of the functions of the Council or such agency or officer, the personnel (except the Commissioner of the District of Columbia, the Assistant to the Commissioner, the Chairman of the District of Columbia Council, the Vice Chairman of the District of Columbia Council, the other members thereof, all of whose offices are abolished by this Act), property, records, and unexpended balances of appropriations and other funds which relate primarily to the functions so transferred.

(b) If any question arises in connection with the carrying out of subsection (a), such questions shall be decided—

(1) in the case of functions transferred from a Federal officer or agency, by the Director of the Office of Management and Budget; and

(2) in the case of other functions (A) by the Council, or in such manner as the Council shall provide, if such functions are transferred to the Council, and (B) by the Mayor if such functions are transferred to him or to any other officer or agency.

(c) Any of the personnel authorized to be transferred to the Council, the Mayor, or any agency by this section which the Council or the head of such agency shall find to be in excess of the personnel necessary for the administration of its or his function shall, in accordance with law, be retransferred to other positions in the District or Federal Government or be separated from the service.

(d) No officer or employee shall, by reason of his transfer to the District government under this Act or his separation from service under this Act, be deprived of any civil service rights, benefits, and privileges held by him prior to such transfer or any right of appeal or review he may have by reason of his separation from service.

EXISTING STATUTES, REGULATIONS, AND OTHER ACTIONS

SEC. 714. (a) Any statute, regulation, or other action in respect of (and any regulation or other action issued, made, taken, or granted by) any officer or agency from which any function is transferred by this Act shall, except to the extent modified or made inapplicable by or under authority of law, continue in effect as if such transfer had not been made; but after such transfer, references in such statute, regulation, or other action to an officer or agency from which a transfer is made by this Act shall be held and considered to refer to the officer or agency to which the transfer is made.

(b) As used in subsection (a), the term "other action" includes without limitation, any rule, order, contract, compact, policy, determination, directive, grant, authorization, permit, requirement, or designation.

(c) Unless otherwise specifically provided in this Act, nothing contained in this Act shall be construed as affecting the applicability to the District government of personnel legislation relating to the District government until such time as the Council may otherwise elect to provide equal or equivalent coverage.

PENDING ACTIONS AND PROCEEDINGS

SEC. 715. (a) No suit, action, or other judicial proceeding lawfully commenced by or against any officer or agency in his or its official capacity or in relation to the exercise of his or its official functions, shall abate by reason of the taking effect of any provision of this Act; but the court, unless it determines that the survival of such suit, action, or other proceedings is not necessary for purposes of settlement of the questions involved, shall allow the same to be maintained, with such substitutions as to parties as are appropriate.

(b) No administrative action or proceeding lawfully commenced shall abate solely by reason of the taking effect of any provision of this Act, but such action or proceeding shall be continued with such substitutions as to parties and officers or agencies as are appropriate.

VACANCIES RESULTING FROM ABOLISHMENT OF OFFICERS OF COMMISSIONER AND ASSISTANT TO THE COMMISSIONER

SEC. 716. Until the 1st day of July next after the first Mayor takes office under this Act no vacancy occurring in any District agency by reason of section 711, abolishing the offices of Commissioner of the District of Columbia and Assistant to the Commissioner, shall affect the power of the remaining members of such agency to exercise its functions; but such agency may take action only if a majority of the members holding office vote in favor of it.

STATUS OF THE DISTRICT

SEC. 717. (a) All of the territory constituting the permanent seat of the Government of the United States shall continue to be designated as the District of Columbia. The District of Columbia shall remain and continue a body corporate, as provided in section 2 of the Revised Statutes relating to the District (D.C. Code, sec. 1-102). Said Corporation shall continue to be charged with all the duties, obligations, responsibilities, and liabilities, and to be vested with all of the powers, rights, privileges, immunities, and assets, respectively, imposed upon and vested in said Corporation or the Commissioner.

(b) No law or regulation which is in force on the effective date of title IV of this Act shall be deemed amended or repealed by this Act except to the extent specifically provided herein or to the extent that such law or regulation is inconsistent with this Act, but any such law or regulation may be amended or repealed by act or resolution as authorized in this Act, or by Act of Congress, except that, notwithstanding the provisions of section 752 of this Act, such authority to repeal shall not be construed as authorizing the Council to repeal or otherwise alter, by amendment or otherwise, any provision of subchapter III of chapter 73 of title 5, United States Code, in whole or in part.

(c) Nothing contained in this section shall affect the boundary line between the District of Columbia and the Commonwealth of Virginia as the same was established or may be subsequently established under the provisions of title I of the Act of October 31, 1945 (59 Stat. 552) [D.C. Code, sec. 101 note].

CONTINUATION OF THE DISTRICT OF COLUMBIA COURT SYSTEM

SEC. 718. (a) The District of Columbia Court of Appeals, the Superior Court of the District of Columbia, and the District of Columbia Commission on Judicial Disabilities and Tenure shall continue as provided under the District of Columbia Court Reorganization Act of 1970 subject to the provisions of part C of title IV of this Act and section 602(a) (4).

(b) The term and qualifications of any judge of any District of Columbia court, and the term and qualifications of any member of the District of Columbia Commission on Judicial Disabilities and Tenure appointed prior to the effective date of title IV of this Act shall not be affected by the provisions of part C of title IV of this Act. No provision of this Act shall be construed to extend the term of any such judge or member of such Commission. Judges of the District of Columbia courts and members of the District of Columbia Commission on Judicial Disabilities and Tenure appointed after the effective date of title IV of this Act shall be appointed according to part C of such title IV.

(c) Nothing in this Act shall be construed to amend, repeal, or diminish the duties, rights, privileges, or benefits accruing under sections 1561 through 1571 of title 11 of the District of Columbia Code, and sections 703 and 904 of such title, dealing with the retirement and compensation of the judges of the District of Columbia courts.

CONTINUATION OF THE BOARD OF EDUCATION

SEC. 719. The term of any member elected to the District of Columbia Board of Education, and the powers and duties of the Board of Education shall not be affected by the provisions of section 495. No provision of such section shall be construed to extend the term of any such member or to terminate the term of any such member.

PART C—TEMPORARY PROVISIONS

POWERS OF THE PRESIDENT DURING TRANSITIONAL PERIOD

SEC. 721. The President of the United States is hereby authorized and requested to take such action during the

period following the date of the enactment of this Act and ending on the date of the first meeting of the Council, by Executive order or otherwise, with respect to the administration of the functions of the District government, as he deems necessary to enable the Board of Elections properly to perform its functions under this Act.

REIMBURSABLE APPROPRIATIONS FOR THE DISTRICT

Sec. 722. (a) The Secretary of the Treasury is authorized to advance to the District of Columbia the sum of \$750,000, out of any money in the Treasury not otherwise appropriated, for use (1) in paying the expenses of the Board of Elections (including compensation of the members thereof), and (2) in otherwise carrying into effect the provisions of this Act.

(b) The full amount expended out of the money advanced pursuant to this section shall be reimbursed to the United States, without interest, during the second fiscal year which begins after the effective date of title IV, from the general fund of the District.

INTERIM LOAN AUTHORITY

Sec. 723. (a) The Mayor is authorized to accept loans for the District from the Treasury of the United States, and the Secretary is authorized to lend to the Mayor, such sums as the Mayor may determine are required to complete capital projects for which construction and construction services funds have been authorized or appropriated, as the case may be, by Congress prior to the effective date of title IV. In addition, such loans may include funds to pay the District's share of the cost of the adopted regional system specified in the National Capital Transportation Act of 1969 [D.C. Code, sec. 1-1441 et seq.].

(b) Loans advanced pursuant to this section during any six-month period shall be at a rate of interest determined by the Secretary as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowing at a maturity approximately equal to the period of time the loan is outstanding.

(c) Subject to the limitations contained in section 603(b), there are authorized to be appropriated such sums as may be necessary to make loans under this section.

POLITICAL PARTICIPATION IN CERTAIN ELECTIONS FIRST HELD UNDER THIS ACT

Sec. 724. (a) In order to provide continuity in the government of the District of Columbia during the transition from the appointed government to the elected government provided for under this Act, no person employed by the United States or by the government of the District of Columbia shall be prohibited by reason of such employment—

(1) from being a candidate in the first primary election and general election held under this Act for the office of Mayor or Chairman or member of the Council of the District of Columbia provided for under title IV of this Act, and

(2) if such a candidate, from taking an active part in political management or political campaigns in any election referred to in paragraph (1) of this subsection.

(b) Such candidacy shall be deemed to have commenced on the day such person obtains from the Board of Elections an official nominating petition with his name stamped thereon, and shall terminate—

(1) in the case of such candidate who ceases to be eligible as a nominee for the office with respect to which such petition was obtained by reason of his inability or failure to qualify as a bona fide nominee prior to the expiration of the final date for filing such petition under the election laws of the District of Columbia, on the day following such expiration date;

(2) in the case of such candidate who is elected to any such office with respect to which such nominating petition was obtained, on the day such candidate takes office following the election held with respect thereto;

(3) in the case of such candidate who is defeated in a primary election held to nominate candidates for the office with respect to which such nominating petition was obtained, on the expiration of the thirty day period following the date of such primary election; and

(4) in the case of such candidate who fails to be elected in a general election to any such office with re-

spect to which such nominating petition was obtained, on the expiration of the thirty day period following the date of such election.

(c) The provisions of this section shall terminate as of January 2, 1975. (Added Apr. 17, 1974, Pub. L. 93-268, § 3(a), 88 Stat. 86.)

PART D—MISCELLANEOUS

AGREEMENTS WITH UNITED STATES

Sec. 731. (a) For the purpose of preventing duplication of effort or for the purpose of otherwise promoting efficiency and economy, any Federal officer or agency may furnish services to the District government and any District officer or agency may furnish services to the Federal Government. Except where the terms and conditions governing the furnishing of such services are prescribed by other provisions of law, such services shall be furnished pursuant to an agreement (1) negotiated by the Federal and District authorities concerned, and (2) approved by the Director of the Federal Office of Management and Budget and by the Mayor. Each such agreement shall provide that the cost of furnishing such services shall be borne in the manner provided in subsection (c) by the government to which such services are furnished at rates or charges based on the actual cost of furnishing such services.

(b) For the purpose of carrying out any agreement negotiated and approved pursuant to subsection (a), any District officer or agency may in the agreement delegate any of his or its functions to any Federal officer or agency, and any Federal officer or agency may in the agreement delegate any of his or its functions to any District officer or agency. Any function so delegated may be exercised in accordance with the terms of the delegation.

(c) The cost to each Federal officer and agency in furnishing services to the District pursuant to any such agreement are authorized to be paid, in accordance with the terms of the agreement, out of appropriations available to the District officers and agencies to which such services are furnished. The costs to each District officer and agency in furnishing services to the Federal Government pursuant to any such agreement are authorized to be paid, in accordance with the terms of the agreement, out of appropriations made by the Congress or other funds available to the Federal officers and agencies to which such services are furnished, except that the Chief of the Metropolitan Police shall on a nonreimbursable basis when requested by the Director of the United States Secret Service assist the Secret Service and the Executive Protection Service in the performance of their respective protective duties under section 3056 of title 18 of the United States Code and section 302 of title 3 of the United States Code.

PERSONAL INTEREST IN CONTRACTS OR TRANSACTIONS

Sec. 732. Any officer or employee of the District who is convicted of a violation of section 208 of title 18, United States Code, shall forfeit his office or position.

COMPENSATION FROM MORE THAN ONE SOURCE

Sec. 733. (a) Except as provided in this Act, no person shall be ineligible to serve or to receive compensation as a member of the Board of Elections and Ethics because he occupies another office or position or because he receives compensation (including retirement compensation) from another source.

(b) The right to another office or position or to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his service or receipt of compensation as a member of such Board, if such service does not interfere with the discharge of his duties in such other office or position. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

ASSISTANCE OF THE UNITED STATES CIVIL SERVICE COMMISSION IN DEVELOPMENT OF DISTRICT MERIT SYSTEM

Sec. 734. The United States Civil Service Commission is hereby authorized to advise and assist the Mayor and the Council in the further development of the merit system or systems required by section 422(3) and the said Commission is authorized to enter into agreements with the District government to make available its registers

of eligibles as a recruiting source to fill District positions as needed. The costs of any specific services furnished by the Civil Service Commission may be compensated for under the provisions of section 731 of this Act.

REVENUE SHARING RESTRICTIONS

SEC. 735. Section 141(c) of the State and Local Fiscal Assistance Act of 1972 (86 Stat. 919) [31 U.S.C. 1261] is amended to read as follows:

"(c) DISTRICT OF COLUMBIA.—For purposes of this title, the District of Columbia shall be treated both—

"(1) as a State (and any reference to the Governor of a State shall, in the case of the District of Columbia, be treated as a reference to the Mayor of the District of Columbia), and

"(2) as a county area which has no units of local government (other than itself) within its geographic area."

INDEPENDENT AUDIT

SEC. 736. (a) In addition to the audit carried out under section 455, the accounts and operations of the District government shall be audited annually by the General Accounting Office in accordance with such principles and procedures, and in such detail, and under such rules and regulations as may be prescribed by the Comptroller General of the United States. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents, the Comptroller General shall give due regard to generally accepted principles of auditing, including consideration of the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the District and necessary to facilitate the audit, and such representatives shall be afforded full facilities for auditing the accounts and operations of the District government.

(b) (1) The Comptroller General shall submit his audit reports to the Congress, the Mayor, and the Council. The reports shall set forth the scope of the audits and shall include such comments and information as the Comptroller General may deem necessary to keep the Congress, the Mayor, and the Council informed of the operations to which the reports relate, together with such recommendations with respect thereto as the Comptroller General may deem advisable.

(2) After the Mayor has had an opportunity to be heard, the Council may make such report, together with such other material as it deems pertinent thereto, available for public inspection.

(3) The Mayor, within ninety days after receipt of the audit from the Comptroller General, shall state in writing to the Council, with a copy to the Congress, what has been done to comply with the recommendations made by the Comptroller General in the report.

ADJUSTMENTS

SEC. 737. (a) Subject to section 731, the Mayor, with the approval of the Council, and the Director of the Office of Management and Budget, is authorized and empowered to enter into an agreement or agreements concerning the manner and method by which amounts owed by the District to the United States, or by the United States to the District, shall be ascertained and paid.

(b) The United States shall reimburse the District for necessary expenses incurred by the District in connection with assemblages, marches, and other demonstrations in the District which relate primarily to the Federal Government. The manner and method of ascertaining and paying the amounts needed to so reimburse the District shall be determined by agreement entered into in accordance with subsection (a) of this section.

(c) Each officer and employee of the District required to do so by the Council shall provide a bond which such surety and in such amount as the Council may require. The premiums for all such bonds shall be paid out of appropriations for the District.

ADVISORY NEIGHBORHOOD COMMISSIONS

SEC. 738. (a) The Council shall by act divide the District into neighborhood commission areas and, upon re-

ceiving a petition signed by at least 5 per centum of the registered qualified electors of a neighborhood commission area, shall establish for that neighborhood an elected advisory neighborhood commission. In designating such neighborhoods, the Council shall consider natural geographic boundaries, election districts, and divisions of the District made for the purpose of administration of services.

(b) Elections for members of each advisory neighborhood commission shall be nonpartisan, shall be scheduled to coincide with the elections of members of the Board of Education held in the District, and shall be administered by the Board of Elections and Ethics. Advisory neighborhood commission members shall be elected from single member districts within each neighborhood commission area by the registered qualified electors thereof.

(c) Each advisory neighborhood commission—

(1) may advise the District government on matters of public policy including decisions regarding planning, streets, recreation, social services programs, health, safety, and sanitation in that neighborhood commission area;

(2) may employ staff and expend, for public purposes within its neighborhood commission area, public funds and other funds donated to it; and

(3) shall have such other powers and duties as may be provided by act of the Council.

(d) In the manner provided by act of the Council, in addition to any other notice required by law, timely notice shall be given to each advisory neighborhood commission of requested or proposed zoning changes, variances, public improvements, licenses or permits of significance to neighborhood planning and development within its neighborhood commission area for its review, comment, and recommendation.

(e) In order to pay the expenses of the advisory neighborhood commissions, enable them to employ such staff as may be necessary, and to conduct programs for the welfare of the people in a neighborhood commission area, the District government shall apportion to each advisory neighborhood commission, out of the revenue of the District received from the tax on real property in the District including improvements thereon, a sum not less than that part of such revenue raised by levying 1 cent per \$100 of assessed valuation which bears the same ratio to the full sum raised thereby as the population of the neighborhood bears to the population of the District. The Council may authorize additional methods of financing advisory neighborhood commissions.

(f) The Council shall by act make provisions for the handling of funds and accounts by each advisory neighborhood commission and shall establish guidelines with respect to the employment of persons by each advisory neighborhood commission which shall include fixing the status of such employees with respect to the District government, but all such provisions and guidelines shall be uniform for all advisory neighborhood commissions and shall provide that decisions to employ and discharge employees shall be made by the advisory neighborhood commission. These provisions shall conform to the extent practicable to the regular budgetary, expenditure and auditing procedures and the personnel merit system of the District.

(g) The Council shall have authority in accordance with the provisions of this Act, to legislate with respect to the advisory neighborhood commissions established in this section.

(h) The foregoing provisions of this section shall take effect only if agreed to in accordance with the provisions of section 703(a) of this Act. (Amended Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458; Oct. 30, 1975, D.C. Law 1-27, § 2(a), 22 DCR 2470.)

NATIONAL CAPITAL SERVICE AREA

SEC. 739. (a) There is established within the District of Columbia the National Capital Service Area which shall include, subject to the following provisions of this section, the principal Federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the Federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building, and is more particularly described in subsection (f).

(b) There is established in the Executive Office of the President the National Capital Service Director who shall

be appointed by the President. The President, through the National Capital Service Director, shall assure that there is provided, utilizing District of Columbia governmental services to the extent practicable, within the area specified in subsection (a) and particularly described in subsection (f), adequate fire protection and sanitation services. Except with respect to that portion of the National Capital Service Area comprising the United States Capitol Buildings and Grounds as defined in sections 1 and 16 of the Act of July 31, 1946, as amended (40 U.S.C. 193a and 193m) [D.C. Code, secs. 9-118, 9-132], the United States Supreme Court Building and Grounds as defined in section 11 of the Act of August 18, 1949, as amended (40 U.S.C. 13p), and the Library of Congress Buildings and Grounds as defined in section 11 of the Act of August 4, 1950, as amended (2 U.S.C. 167j), the National Capital Service Director shall assure that there is provided within the remainder of such area specified in subsection (a) and subsection (f), adequate police protection and maintenance of streets and highways.

(c) The National Capital Service Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for level IV of the Executive Schedule of section 5314 of title 5 of the United States Code. The Director may appoint, subject to the provisions of title 5 of the United States Code governing appointments in the competitive service, and fix the pay of, in accordance with the provisions of chapter 51 and subchapter 3 of chapter 53 of such title relating to classification and General Schedule pay rates, such personnel as may be necessary.

(d) Section 45 of the Act entitled "An Act to provide for the organization of the militia of the District of Columbia", approved March 1, 1889 (D.C. Code, sec. 39-603), is amended by inserting after "United States Marshal for the District of Columbia," the following: "or for the National Capital Service Director,".

(e) (1) Within one year after the effective date of this section, the President is authorized and directed to submit to the Congress a report on the feasibility and advisability of combining the Executive Protective Service and the United States Park Police within the National Capital Service Area, and placing them under the National Capital Service Director.

(2) Such report shall include such recommendations, including recommendations for legislative and executive action, as the President deems necessary in carrying out the provisions of paragraph (1) of this subsection.

(f) (1) (A) The National Capital Service Area referred to in subsection (a) is more particularly described as follows:

Beginning at that point on the present Virginia-District of Columbia boundary due west of the northernmost point of Theodore Roosevelt Island and running due east to the eastern shore of the Potomac River;

thence generally south along the shore at the mean high water mark to the northwest corner of the Kennedy Center;

thence east along the north side of the Kennedy Center to a point where it reaches the E Street Expressway;

thence east on the expressway to E Street Northwest and thence east on E Street Northwest to Eighteenth Street Northwest;

thence south on Eighteenth Street Northwest to Constitution Avenue Northwest;

thence east on Constitution Avenue to Seventeenth Street Northwest;

thence north on Seventeenth Street Northwest to Pennsylvania Avenue Northwest;

thence east on Pennsylvania Avenue to Jackson Place Northwest;

thence north on Jackson Place to H Street Northwest;

thence east on H Street Northwest to Madison Place Northwest;

thence south on Madison Place Northwest to Pennsylvania Avenue Northwest;

thence east on Pennsylvania Avenue Northwest to Fifteenth Street Northwest;

thence south on Fifteenth Street Northwest to Pennsylvania Avenue Northwest;

thence southeast on Pennsylvania Avenue Northwest to John Marshall Place Northwest;

thence north on John Marshall Place Northwest to C Street Northwest;

thence east on C Street Northwest to Third Street Northwest;

thence north on Third Street Northwest to D Street Northwest;

thence east on D Street Northwest to Second Street Northwest;

thence south on Second Street Northwest to the intersection of Constitution Avenue Northwest and Louisiana Avenue Northwest;

thence northeast on Louisiana Avenue Northwest to North Capitol Street;

thence north on North Capitol Street to Massachusetts Avenue Northwest;

thence southeast on Massachusetts Avenue Northwest so as to encompass Union Square;

thence following Union Square to F Street Northeast;

thence east on F Street Northeast to Second Street Northeast;

thence south on Second Street Northeast to D Street Northeast;

thence west on D Street Northeast to First Street Northeast;

thence south on First Street Northeast to Maryland Avenue Northeast;

thence generally north and east on Maryland Avenue to Second Street Northeast;

thence south on Second Street Northeast to C Street Southeast;

thence west on C Street Southeast to New Jersey Avenue Southeast;

thence south on New Jersey Avenue Southeast to D Street Southeast;

thence west on D Street Southeast to Canal Street Parkway;

thence southeast on Canal Street Parkway to E Street Southeast;

thence west on E Street Southeast to the intersection of Canal Street Southwest and South Capitol Street;

thence northwest on Canal Street Southwest to Second Street Southwest;

thence south on Second Street Southwest to Virginia Avenue Southwest;

thence generally west on Virginia Avenue to Third Street Southwest;

thence north on Third Street Southwest to C Street Southwest;

thence west on C Street Southwest to Sixth Street Southwest;

thence north on Sixth Street Southwest to Independence Avenue;

thence west on Independence Avenue to Twelfth Street Southwest;

thence south on Twelfth Street Southwest to D Street Southwest;

thence west on D Street Southwest to Fourteenth Street Southwest;

thence south on Fourteenth Street Southwest to the middle of the Washington Channel;

thence generally south and east along the midchannel of the Washington Channel to a point due west of the northern boundary line of Fort Lesley McNair;

thence due east to the side of the Washington Channel;

thence following generally south and east along the side of the Washington Channel at the mean high water mark, to the point of confluence with the Anacostia River, and along the northern shore at the mean high water mark to the northern most point of the Eleventh Street Bridge;

thence generally south and east along the northern side of the Eleventh Street Bridge to the eastern shore of the Anacostia River;

thence generally south and west along such shore at the mean high water mark to the point of confluence of the Anacostia and Potomac Rivers;

thence generally south along the eastern shore at the mean high water mark of the Potomac River to the point where it meets the present southeastern boundary line of the District of Columbia;

thence south and west along such southeastern boundary line to the point where it meets the present Virginia-District of Columbia boundary;

thence generally north and west up the Potomac River along the Virginia-District of Columbia boundary to the point of beginning.

(B) Where the area in paragraph (1) is bounded by any street, such street, and any sidewalk thereof, shall be included within such area.

(2) Any Federal real property affronting or abutting, as of the date of the enactment of this Act [Dec. 24, 1973], the area described in paragraph (1) shall be deemed to be within such area.

(3) For the purposes of paragraph (2), Federal real property affronting or abutting such area described in paragraph (1) shall—

(A) be deemed to include, but not limited to, Fort Lesley McNair, the Washington Navy Yard, the Anacostia Naval Annex, the United States Naval Station, Bolling Air Force Base, and the Naval Research Laboratory; and

(B) not be construed to include any area situated outside of the District of Columbia boundary as it existed immediately prior to the date of the enactment of this Act, nor be construed to include any portion of the Anacostia Park situated east of the northern side of the Eleventh Street Bridge, or any portion of the Rock Creek Park.

(g)(1) Subject to the provisions of paragraph (2) of this subsection, the President is authorized and directed to conduct a survey of the area described in this section in order to establish the proper metes and bounds of such area, and to file, in such manner and at such place as he may designate, a map and a legal description of such area, and such description and map shall have the same force and effect as if included in this Act, except that corrections of clerical, typographical and other errors in any such legal descriptions and map may be made. In conducting such survey, the President shall make such adjustments as may be necessary in order to exclude from the National Capital Service Area any privately owned properties, and buildings and adjacent parking facilities owned by the District of Columbia government.

(2) In carrying out the provisions of paragraph (1) of this subsection, the President shall, to the extent that such survey, legal description, and map involves areas comprising the United States Capitol Buildings and Grounds as defined in sections 1 and 16 of the Act of July 31, 1946, as amended (40 U.S.C. 193a and 193m) [D.C. Code, secs. 9-118, 9-132], and other buildings and grounds under the care of the Architect of the Capitol, consult with the Architect of the Capitol.

(3) Section 1 of the Act of July 31, 1946, as amended by the Act of October 20, 1967 (60 Stat. 718; 81 Stat. 275; 40 U.S.C. 193a) [D.C. Code, sec. 9-118], is hereby amended to include within the definition of the United States Capitol Grounds, the following streets: "Independence Avenue from the west curb of First Street S.E. to the east curb of First Street S.W., New Jersey Avenue S.E. from the south curb of Independence Avenue to the north curb of D Street S.E., South Capitol Street from the south curb of Independence Avenue to the north curb of D Street; Delaware Avenue S.W. from the south curb of C Street S.W. to the north curb of D Street S.W., C Street from the west curb of First Street S.E. to the intersection of First and Canal Streets, S.W., D Street from the west curb of First Street S.E. to the intersection of Canal Street and Delaware Avenue S.W., that part of First Street lying west of the outer face of the curb of the sidewalk on the east side thereof from D Street, N.E. to D Street S.E., that part of First Street within the east and west curblines thereof extending from the north side of Pennsylvania Avenue N.W. to the intersection of C Street and Canal Street S.W., including the two circles within such area. Nothing in this section shall be construed as repealing, or otherwise altering, modifying, affecting, or superseding those provisions of law in effect on the date immediately preceding the effective date of title IV of this Act vesting authority in the United States Supreme Court police and Library of Congress police to make arrests in adjacent streets, including First Street N.E. and First Street S.E."

(4) Section 9 of the Act of July 31, 1946, as amended (40 U.S.C. 212a) [D.C. Code, sec. 9-126], is amended by deleting "or of any State," and inserting in lieu thereof

a comma and the following: "of the District of Columbia, or of any State,".

(5) Section 9 of such Act is further amended by deleting the following: ", with the exception of the streets and roadways shown on the map referred to in section 1 of this Act as being under the jurisdiction and control of the Commissioners of the District of Columbia."

(6) Section 14(a) of the Act of July 31, 1946, as amended (40 U.S.C. 212b) [D.C. Code, sec. 9-131], is amended by deleting: ", except on those streets and roadways shown on the map referred to in section 1 of this Act as being under the jurisdiction and control of the Commissioners of the District of Columbia".

(7) Section 1 of the Act of July 31, 1946, as amended (40 U.S.C. 193a) [D.C. Code, sec. 9-118], is amended by deleting ": *Provided*, That those streets and roadways in said United States Capitol Grounds shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia shall continue under such jurisdiction and control, and said Commissioners shall be responsible for the maintenance and improvement thereof: *Provided further*," and inserting in lieu thereof a comma and the following: "including those streets and roadways in said United States Capitol Grounds as shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia, except that the Commissioner of the District of Columbia shall be responsible for the maintenance and improvement of those portions of the following streets which are situated between the curblines thereof: Constitution Avenue from First Street N.E. to Second Street N.W., First Street from D Street N.E. to D Street S.E., D Street from First Street S.E. to Canal Street S.W., and First Street from the north side of Louisiana Avenue to the intersection of C Street and Canal Street S.W.: *Provided*,".

(8) Section 9 of the Act of August 18, 1949, as amended (40 U.S.C. 13n), is amended by deleting "or of any State" and inserting in lieu thereof a comma and the following: "any law of the District of Columbia, or of any State,".

(9) Section 9 of the Act of August 4, 1950, as amended (2 U.S.C. 167h), is amended by deleting "or of any State" and inserting in lieu thereof a comma and the following: "any law of the District of Columbia or of any State,".

(h)(1) Except to the extent specifically provided by the provisions of this section, and amendments made by this section, nothing in this section shall be applicable to the United States Capitol Buildings and Grounds as defined in sections 1 and 16 of the Act of July 31, 1946, as amended (40 U.S.C. 193a, 193m) [D.C. Code, secs. 9-118, 9-132], or to any other buildings and grounds under the care of the Architect of the Capitol, the United States Supreme Court Building and Grounds as defined in section 11 of the Act of August 18, 1949, as amended (40 U.S.C. 13p), and the Library of Congress Buildings and Grounds as defined in section 11 of the Act of August 4, 1950, as amended (2 U.S.C. 167j), and except to the extent herein specifically provided, including amendments made by this section, nothing in this section shall be construed to repeal, amend, alter, modify, or supersede any provision of the Act of July 31, 1946, as amended (40 U.S.C. 193a et seq.) [D.C. Code, sec. 9-118 et seq.], or any other of the general laws of the United States or any of the laws enacted by the Congress and applicable exclusively to the District of Columbia, or any rule or regulation promulgated pursuant thereto, in effect on the date immediately preceding the effective date of title IV of this Act pertaining to said buildings and grounds, or any existing authority, with respect to such buildings and grounds, vested by law, or otherwise, on such date immediately preceding such effective date, in the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, or the Librarian of Congress.

(2) Notwithstanding the foregoing provision of this section, any of the services and facilities authorized by this Act to be rendered or furnished (including maintenance of streets and highways, and services under section 731 of this Act) shall, as far as practicable, be made available to the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof,

the Architect of the Capitol, or any other officer of the legislative branch vested by law or otherwise on such date immediately preceding the effective date of title IV of this Act with authority over such buildings and grounds, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, and the Librarian of Congress, upon their request, and, if payment would be required for the rendition or furnishing of a similar service or facility to any other Federal agency, payment therefor shall be made by the recipient thereof, upon presentation of proper vouchers, in advance or by reimbursement (as may be agreed upon by the parties rendering and receiving such services).

(i) Except to the extent otherwise specifically provided in the provisions of this section, and amendments made by this section, all general laws of the United States and all laws enacted by the Congress and applicable exclusively to the District of Columbia, including regulations and rules promulgated pursuant thereto, in effect on the date immediately preceding the effective date of title IV of this Act and which, on such date immediately preceding the effective date of such title, are applicable to and within the areas included within the National Capital Service Area pursuant to this section shall, on and after such effective date, continue to be applicable to and within such National Capital Service Area in the same manner and to the same extent as if this section had not been enacted, and shall remain so applicable until such time as they are repealed, amended, altered, modified, or superseded, and such laws, regulations and rules shall thereafter be applicable to and within such area in the manner and to the extent so provided by any such amendment, alteration, or modification.

(j) In no case shall any person be denied the right to vote or otherwise participate in any manner in any election in the District of Columbia solely because such person resides within the National Capital Service Area.

EMERGENCY CONTROL OF POLICE

SEC. 740. (a) Notwithstanding any other provision of law, whenever the President of the United States determines that special conditions of an emergency nature exist which require the use of the Metropolitan Police force for Federal purposes, he may direct the Mayor to provide him, and the Mayor shall provide, such services of the Metropolitan Police force as the President may deem necessary and appropriate. In no case, however, shall such services made available pursuant to any such direction under this subsection extend for a period in excess of forty-eight hours unless the President has, prior to the expiration of such period, notified the Chairman and ranking minority Members of the Committees on the District of Columbia of the Senate and the House of Representatives, in writing, as to the reason for such direction and the period of time during which the need for such services is likely to continue.

(b) Subject to the provisions of subsection (c) of this section, such services made available in accordance with subsection (a) of this section shall terminate upon the end of such emergency, the expiration of a period of thirty days following the date on which such services are first made available, or the adoption of a resolution by either the Senate or the House of Representatives providing for such termination, whichever first occurs.

(c) Notwithstanding the foregoing provisions of this section, in any case in which such services are made available in accordance with the provisions of subsection (a) of this section during any period of an adjournment of the Congress sine die, such services shall terminate upon the end of the emergency, the expiration of the thirty-day period following the date on which Congress first convenes following such adjournment, or the adoption of a resolution by either the Senate or the House of Representatives providing for such termination, whichever first occurs.

(d) Except to the extent provided for in subsection (c) of this section, no such services made available pursuant to the direction of the President pursuant to subsection (a) of this section shall extend for any period in excess of thirty days, unless the Senate and the House of Representatives approve a concurrent resolution authorizing such an extension.

HOLDING OFFICE IN THE DISTRICT

SEC. 741. [Repealed. Apr. 17, 1974. Pub. L. 93-268, § 4(c), 88 Stat. 87.]

OPEN MEETINGS

SEC. 742. (a) All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the District Council, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation or other official action shall be effective unless taken, made, or enacted at such meeting.

(b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government. Copies of such written transcripts or copies of such transcriptions shall be available upon request to the public at reasonable cost.

TERMINATION OF THE DISTRICT'S AUTHORITY TO BORROW FROM THE TREASURY

SEC. 743. (a) The first section of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to borrow funds for capital improvement programs and to amend provisions of law relating to Federal Government participation in meeting costs of maintaining the Nation's Capital City", approved June 6, 1958 (72 Stat. 183; D.C. Code, sec. 9-220), is amended by striking out subsections (b), (c), (d), and (e).

(b) The Act entitled "An Act authorizing loans from the United States Treasury for the expansion of the District of Columbia water system", approved June 2, 1950 (60 Stat. 195; D.C. Code, sec. 43-1540), is repealed.

(c) Title II of the Act entitled "An Act to authorize the financing of a program of public works construction for the District of Columbia, and for other purposes", approved May 18, 1954 (68 Stat. 108), is amended by striking out sections 213, 214, 216, 217, and 218 (D.C. Code, sections 43-1612, 43-1613, 43-1615, 43-1616, and 43-1617), authorizing loans from the United States Treasury for sanitary and combined sewer systems of the District.

(d) Section 402 of title IV of such Act approved May 18, 1954 (68 Stat. 110; D.C. Code, sec. 7-133), authorizing loans from the United States Treasury for the District of Columbia highway construction program, is repealed.

(e) Nothing contained in this section shall be deemed to relieve the District of its obligation to repay any loan made to it under the authority of the Acts specified in the preceding subsections, nor to preclude the District from using the unexpended balance of any such loan appropriated to the District prior to the effective date of this provision, nor to prevent the District from fulfilling the provisions of section 722.

PART E—AMENDMENTS TO THE DISTRICT OF COLUMBIA ELECTION ACT

AMENDMENTS

SEC. 751. The District of Columbia Election Act (D.C. Code, secs. 1-1101—1-1115) is amended as follows:

(1) The first section of such Act (D.C. Code, sec. 1-1101) is amended by inserting immediately after "Board of Education," the following: "the members of the Council of the District of Columbia, the Mayor".

(2) Section 2 of such Act (D.C. Code, sec. 1-1102) is amended by adding at the end thereof the following new paragraphs:

"(8) The term 'Council' or 'Council of the District of Columbia' means the Council of the District of Columbia established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act.

"(9) The term 'Mayor' means the office of Mayor of the District of Columbia established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act."

(3) Subsections (h), (i), (j), and (k) of section 8 of such Act (D.C. Code, sec. 1-1108) are amended to read as follows:

"(h)(1)(A) The Delegate, Mayor, Chairman of the District Council and the four at-large members of the Council shall be elected by the registered qualified electors of the District of Columbia in a general election. Each candidate for the office of Delegate, Mayor, Chairman of the District Council, and at-large members of the

Council in any general election shall, except as otherwise provided in subsection (j) of this section and section 10(d), have been elected by the registered qualified electors of the District as such candidate by the next preceding primary election.

"(B) (i) A member of the office of Council (other than the Chairman and any member elected at large) shall be elected in a general election by the registered qualified electors of the respective ward of the District from which the individual seeking such office was elected as a candidate for such office as provided in clause (ii) of this paragraph.

"(ii) Each candidate for the office of member of the Council (other than Chairman and at-large members) shall, except as otherwise provided in subsection (j) of this section and section 10(d), have been elected as such a candidate, by the registered qualified electors of the ward of the District from which such individual was nominated, at the next preceding primary election to fill such office within that ward.

"(2) The nomination and election of any individual to the office of Delegate, Mayor, Chairman of the Council and member of the Council shall be governed by the provisions of this Act. No political party shall be qualified to hold a primary election to select candidates for election to any such office in a general election unless, in the next preceding election year, at least seven thousand five hundred votes were cast in the general election for a candidate of such party for any such office or for its candidates for electors of President and Vice President.

"(i) (1) Each individual in a primary election for candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council shall be nominated for any such office by a petition (A) filed with the Board not later than sixty days before the date of such primary election, and (B) signed by at least two thousand registered qualified electors of the same political party as the nominee, or by 1 per centum of the duly registered members of such political party, whichever is less, as shown by the records of the Board of Elections as of the one hundred fourteenth day before the date of such election.

"(2) Each individual in a primary election for candidate for the office of member of the Council (other than the Chairman and at-large members) shall be nominated for such office by a petition (A) filed with the Board not later than sixty days before the date of such primary election, and (B) signed by at least two hundred and fifty persons in the ward from which such individual seeks election who are duly registered in such ward under section 7 of this Act, and who are of the same political party as the nominee.

"(3) A nominating petition for a candidate in a primary election for any such office may not be circulated for signature before the one hundred fourteenth day preceding the date of such election and may not be filed with the Board before the eighty-fifth day preceding such date. The Board may prescribe rules with respect to the preparation and presentation of nominating petitions. The Board shall arrange the ballot of each political party in each such primary election as to enable a voter of such party to vote for nominated candidates of that party.

"(j) (1) A duly qualified candidate for the office of Delegate, Mayor, Chairman of the Council, or member of the Council may, subject to the provisions of this subsection, be nominated directly as such a candidate for election for such office (including any such election to be held to fill a vacancy). Such person shall be nominated by petition (A) filed with the Board not less than sixty days before the date of such general election, and (B) in the case of a person who is a candidate for the office of member of the Council (other than the Chairman or an at-large member), signed by five hundred voters who are duly registered under section 7 in the ward from which the candidate seeks election; and in the case of a person who is a candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council, signed by duly registered voters equal in number to 1½ per centum of the total number of registered voters in the District, as shown by the records of the Board as of one hundred fourteen days before the date of such election, or by three thousand persons duly registered

under section 7, whichever is less. No signatures on such a petition may be counted which have been made on such petition more than one hundred fourteen days before the date of such election.

"(2) Nominations under this subsection for candidates for election in a general election to any office referred to in paragraph (1) shall be of no force and effect with respect to any person whose name has appeared on the ballot of a primary election for that office held within eight months before the date of such general election.

"(k) (1) In each general election for the office of member of the Council (other than the office of the Chairman or an at-large member) the Board shall arrange the ballots in each ward to enable a voter registered in that ward to vote for any one candidate who (A) has been duly elected by any political party in the next preceding primary election for such office from such ward, (B) has been duly nominated to fill a vacancy in such office in such ward pursuant to section 10(d), or (C) has been nominated directly as a candidate for such office in such ward under subsection (j) of this section.

"(2) In each general election for the office of Chairman and member of the Council at large, the Board shall arrange the ballots to enable a registered qualified elector to vote for as many candidates for election as members at large as there are members at large to be elected in such election, including the Chairman. Such candidates shall be only those persons who (A) have been duly elected by any political party in the next preceding primary election for such office, (B) have been duly nominated to fill vacancies in such office pursuant to section 10(d), or (C) have been nominated directly as a candidate under subsection (j) of this section.

"(3) In each general election for the office of Delegate and Mayor, the Board shall arrange the ballots to enable a registered qualified elector to vote for any one of the candidates for any such office who (A) has been duly elected by any political party in the next preceding primary election for such office, (B) has been duly nominated to fill a vacancy in such office pursuant to section 10(d), or (C) has been nominated directly as a candidate under subsection (j) of this section."

(4) Paragraph (3) of section 10(a) of such Act (D.C. Code, sec. 1-1110) is amended (1) by inserting "(A)" immediately before the word "Except", and (2) by adding at the end thereof the following:

"(B) Except as otherwise provided in the case of special elections under this Act, primary elections of each political party for the office of member of the Council shall be held on the first Tuesday after the second Monday in September in 1974, and every second year thereafter, and general election for such offices shall be held on the first Tuesday after the first Monday in November in 1974 and every second year thereafter.

"(C) Except as otherwise provided in the case of a special election under this Act, primary elections of each political party for the office of Mayor and Chairman shall be held on the first Tuesday after the second Monday in September of every fourth year, commencing with calendar year 1974, and the general election for such office shall be held on the first Tuesday after the first Monday in November in 1974 and every fourth year thereafter."

(5) Paragraphs (6), (7), (8), and (9) of section 10(a) of such Act (D.C. Code, sec. 1-1110) are repealed, and paragraphs (4) and (5) of such section 10(a) are amended to read as follows:

"(4) With respect to special elections required or authorized by this Act, the Board may establish the dates on which such special elections are to be held and prescribe such other terms and conditions as may, in the Board's opinion, be necessary or appropriate for the conduct of such elections in a manner comparable to that prescribed for other elections held pursuant to this Act.

"(5) General elections for members of the Board of Education shall be held on the first Tuesday after the first Monday in November of each odd-numbered calendar year."

(6) Section 10(b) of such Act (D.C. Code, sec. 1-1110) is amended by striking out "other than general elections for the Office of Delegate and for members of the Board of Education."

(7) Section 10(c) of such Act (D.C. Code, sec. 1-1110) is amended by striking out the words "other than an election for members of the Board of Education".

(8) Section 10(d) of such Act (D.C. Code, sec. 1-1110) is amended to read as follows:

"(d) In the event that any official, other than the Delegate, Mayor, member of the Council, member of the Board of Education, or a winner of a primary election for the office of Delegate, Mayor, or member of the Council, elected pursuant to this Act dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this Act to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of such term shall be chosen pursuant to the rules of the duly authorized party committee, except that such successor shall have the qualifications required by this Act for such office. In the event that such a vacancy occurs in the office of a candidate for the office of Delegate, Mayor, or member of the Council who has been declared the winner in the preceding primary election of such office, the vacancy may be filled not later than fifteen days prior to the next general election for such office, by nomination by the party committee of the party which nominated his predecessor. In the event that such a vacancy occurs in the office of Delegate more than eight months before the expiration of its term of office, the Board shall call special elections to fill such vacancy for the remainder of its term of office."

(9) The first sentence of section 15 of such Act (D.C. Code, sec. 1-1115) is amended to read as follows: "No person shall be a candidate for more than one office on the Board of Education or the Council in any election for members of the Board of Education or Council, and no person shall be a candidate for more than one office on the Council in any primary election."

(10) Section 15 of such Act (D.C. Code, sec. 1-1115) is further amended (1) by designating the existing text of such section as subsection (a), and (2) by adding at the end thereof the following new subsection:

"(b) No person who is holding the office of Mayor, Delegate, Chairman or member of the Council, or member of the School Board shall, while holding such office, be eligible as a candidate for any other of such offices in any primary or general election, unless the term of the office which he so holds expires on or prior to the date on which

he would be eligible, if elected in such primary or general election, to take the office with respect to which such election is held."

DISTRICT COUNCIL AUTHORITY OVER ELECTIONS

SEC. 752. Notwithstanding any other provision of this Act or of any other law, the Council shall have authority to enact any act or resolution with respect to matters involving or relating to elections in the District.

PART F—RULES OF CONSTRUCTION

CONSTRUCTION

SEC. 761. To the extent that any provisions of this Act are inconsistent with the provisions of any other laws the provisions of this Act shall prevail and shall be deemed to supersede the provisions of such laws.

PART G—EFFECTIVE DATES

EFFECTIVE DATES

SEC. 771. (a) Titles I and V, and parts A and G, and section 722 of title VII shall take effect on the date of enactment of this Act.

(b) Sections 712, 713, 714, and 715 of title VII, and section 401(b) of title IV, and title II shall take effect July 1, 1974, except that any provision thereof which in effect transfers authority to appoint any citizen member of the National Capital Planning Commission or the District of Columbia Redevelopment Land Agency shall take effect January 2, 1975.

(c) Titles III and IV, except section 401(b) of title IV, shall take effect January 2, 1975, if title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum.

(d) Title VI and parts D and F and sections 711, 716, 717, 718, 719, 721, and 723 of title VII shall take effect only if and upon the date that title IV becomes effective.

(e) Part E of title VII shall take effect on the date on which title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum. (Amended Apr. 17, 1974, Pub. L. 93-268, § 3(c), 88 Stat. 87; Aug. 29, 1974, Pub. L. 93-395, § 1(8), 88 Stat. 793.)

Approved December 24, 1973 (Pub. L. 93-198, 87 Stat. 774).

CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE [XIX]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

The 19th amendment to the Constitution was proposed by the Congress on June 4, 1919. It was declared, in a certificate by the Secretary of State, dated August 26, 1920, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Illinois, June 10, 1919 (and that State readopted its resolution of ratification June 17, 1919); Michigan, June 10, 1919; Wisconsin, June 10, 1919; Kansas, June 16, 1919; New York, June 16, 1919; Ohio, June 16, 1919; Pennsylvania, June 24, 1919; Massachusetts, June 25, 1919; Texas, June 28, 1919; Iowa, July 2, 1919; Missouri, July 3, 1919; Arkansas, July 28, 1919; Montana, August 2, 1919; Nebraska, August 2, 1919; Minnesota, September 8, 1919; New Hampshire, September 10, 1919; Utah, October 2, 1919; California, November 1, 1919; Maine, November 5, 1919; North Dakota, December 1, 1919; South Dakota,

December 4, 1919; Colorado, December 15, 1919; Kentucky, January 6, 1920; Rhode Island, January 6, 1920; Oregon, January 13, 1920; Indiana, January 16, 1920; Wyoming, January 27, 1920; Nevada, February 7, 1920; New Jersey, February 9, 1920; Idaho, February 11, 1920; Arizona, February 12, 1920; New Mexico, February 21, 1920; Oklahoma, February 28, 1920; West Virginia, March 10, 1920; Washington, March 22, 1920; Tennessee, August 18, 1920.

Ratification was completed on August 18, 1920.

The amendment was subsequently ratified by Connecticut on September 14, 1920 (and that State reaffirmed on September 21, 1920); Vermont, February 8, 1921; Maryland, March 29, 1941 (after having rejected it on February 24, 1920; ratification certified on February 25, 1958); Virginia, February 21, 1952 (after rejecting it on February 12, 1920); Alabama, September 8, 1953 (after rejecting it on September 22, 1919); Florida, May 13, 1969; South Carolina, July 1, 1969 (after rejecting it on January 28, 1920; ratification certified on August 22, 1973); Georgia, February 20, 1970 (after rejecting it on July 24, 1919); Louisiana, June 11, 1970 (after rejecting it on July 1, 1920); North Carolina, May 6, 1971.

The amendment was rejected by Mississippi, March 29, 1920; Delaware, June 2, 1920.

PROPOSED AMENDMENT

[EQUAL RIGHTS FOR MEN AND WOMEN]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE—

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SEC. 3. This amendment shall take effect two years after the date of ratification."

HISTORICAL NOTE

Proposed by the Ninety-second Congress. Passed House Oct. 12, 1971. Passed Senate Mar. 22, 1972. Received by the Office of the Federal Register, General Services Administration, Mar. 23, 1972.

This article shall be valid to all intents and purposes as part of the Constitution of the United States when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress.

RATIFICATION BY THE STATES

Hawaii	Mar. 22, 1972
Delaware	Mar. 23, 1972
New Hampshire	Mar. 23, 1972
Idaho	Mar. 24, 1972
Kansas	Mar. 28, 1972
Nebraska	Mar. 29, 1972
Tennessee	Apr. 4, 1972
Alaska	Apr. 5, 1972
Rhode Island	Apr. 14, 1972
New Jersey	Apr. 17, 1972
Texas	Apr. 19, 1972
Colorado	Apr. 21, 1972
Iowa	Apr. 21, 1972
West Virginia	Apr. 22, 1972
Wisconsin	Apr. 26, 1972
New York	May 3, 1972
Michigan	May 22, 1972
Maryland	May 26, 1972
Massachusetts	June 21, 1972
Kentucky	June 26, 1972
Pennsylvania	Sept. 26, 1972
California	Nov. 13, 1972
Wyoming	Jan. 26, 1973
South Dakota	Feb. 5, 1973
Oregon	Feb. 8, 1973
Minnesota	Feb. 12, 1973
New Mexico	Feb. 28, 1973
Vermont	Mar. 1, 1973
Connecticut	Mar. 15, 1973
Washington	Mar. 27, 1973
Maine	Jan. 18, 1974
Montana	Jan. 25, 1974
Ohio	Feb. 7, 1974
North Dakota	Feb. 3, 1975

DISTRICT OF COLUMBIA CODE
1973 Edition

SUPPLEMENT III

LAWS—January 3, 1973, to January 18, 1976

NOTES TO DECISIONS—January 1, 1973, to December 31, 1975

THE CODE OF THE DISTRICT OF COLUMBIA

PART I

GOVERNMENT OF DISTRICT

TITLE 1—ADMINISTRATION.
TITLE 2—DISTRICT BOARDS AND COMMISSIONS.
TITLE 3—BOARD OF PUBLIC WELFARE.
TITLE 4—POLICE AND FIRE DEPARTMENTS.
TITLE 5—BUILDING RESTRICTIONS AND REGULATIONS.

TITLE 6—HEALTH AND SAFETY.
TITLE 7—HIGHWAYS, STREETS, BRIDGES.
TITLE 8—PARKS AND PLAYGROUNDS.
TITLE 9—PUBLIC BUILDINGS AND GROUNDS.
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TITLE 1.—ADMINISTRATION

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Chapter 1.—CREATION OF DISTRICT—GENERAL PROVISIONS

§ 1-101. Territorial area of District of Columbia.

(a) The District of Columbia is that portion of the territory of the United States ceded by the state of Maryland for the permanent seat of government of the United States, including the river Potomac in its course through the District, and the islands therein.

(b) All of the territory constituting the permanent seat of the Government of the United States shall continue to be designated as the District of Columbia. (R.S., D.C., § 1; June 11, 1878, 20 Stat. 102, ch. 180, § 1; Dec. 24, 1973, Pub. L. 93-198, title VII, § 717(a), 87 Stat. 820.)

CODIFICATION

This section is a composite of the credits cited in the history line. Subsection (a) is based on R.S., D.C., § 1, and subsection (b) is based on the first sentence of section 717(a) of Act Dec. 24, 1973.

EFFECTIVE DATE OF SUBSEC. (b)

Subsection (b) is effective Jan. 2, 1975, see sec. 771(d) of Act Dec. 24, 1973, as amended, set out as a note under § 1-121.

PRESENT FORM OF GOVERNMENT

The present form of government was provided by the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774-836). See, generally, section 1-121 et seq. For complete classification of the Act to the Code, see the Parallel Reference Tables.

BOUNDARY LINE BETWEEN THE DISTRICT OF COLUMBIA AND THE COMMONWEALTH OF VIRGINIA

Section 717(c) of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 820 provided: "Nothing contained in this section [§ 101(b)] shall affect the boundary line between

the District of Columbia and the Commonwealth of Virginia as the same was established or may be subsequently established under the provisions of title I of the Act of October 31, 1945 (59 Stat. 552)."

CROSS REFERENCE

National Capital Service Area, see § 9-146.

NOTES TO DECISIONS

Boundaries

Washington National Airport is within boundaries of Commonwealth of Virginia and not within those of District of Columbia; thus employer of pilot, whose base of operations was the airport, correctly reported pilot's wages to Virginia for unemployment compensation purposes and pilot is not entitled to unemployment benefits from the District of Columbia. *J. L. Bryan v. District Unemployment Compensation Board* (D.C. App. 1975, 342 A.2d 45).

District court for the District of Columbia lacked jurisdiction to hear and determine action by the United States to quiet title to fast and submerged lands situated within the territorial limits of the Commonwealth of Virginia. *United States v. Herbert Bryant, Inc., et al.* (1974, 386 F.Supp. 1287).

Term "said Act" as used in provision of 1945 Act, which governs boundary between the District of Columbia and the Commonwealth of Virginia, that nothing in the 1945 Act was to be construed as limiting right of the United States to establish its title to any of specified lands as provided by 1912 Act or jurisdiction of the courts of United States to hear and determine suits to establish title of the United States in all lands as described by said Act below the mean high-water mark of January 24, 1791, referred to the 1912 Act while the term "lands" referred to were those lands in the District of Columbia as specified by the 1912 Act. *Id.*

§ 1-102. District created body corporate for municipal purposes.

(a) The District is created a government by the name of the "District of Columbia," by which name it is constituted a body-corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this Code.

(b) The District of Columbia shall remain and continue a body corporate, as provided in subsection (a) of this section. Said Corporation shall continue

to be charged with all the duties, obligations, responsibilities, and liabilities, and to be vested with all of the powers, rights, privileges, immunities, and assets, respectively, imposed upon and vested in said Corporation or the Commissioner. (R.S., D.C., § 2; June 11, 1878, 20 Stat. 102, ch. 180, § 1; Dec. 24, 1973, Pub. L. 93-198, title VII, § 717(a), 87 Stat. 820.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

This section is a composite of the credits cited in the history line. Subsection (a) is based on R.S., D.C., § 1, and subsection (b) is based on the second and third sentences of section 717(a) of Act Dec. 24, 1973.

EFFECTIVE DATE OF SUBSEC. (b)

Subsection (b) is effective Jan. 2, 1975, see sec. 771(d) of Act Dec. 24, 1973, as amended, set out as a note under § 1-121.

CROSS REFERENCE

Mayor as custodian of corporate seal, see § 1-162.

NOTES TO DECISIONS

Civil Rights Act

In light of unique status of District of Columbia and absent any indication in either language, purposes or history of civil rights statute dealing only with those deprivations of rights which are accomplished under the color of the law of "any State or Territory" of a legislative intent to include the District within scope of its coverage, District of Columbia does not constitute a "State or Territory" within meaning of the statute; disapproving *Sewell v. Pegelow*, 291 F.2d 196 (CA4 1961), *District of Columbia v. M. Carter* (1973, 93 S. Ct. 602, 409 U.S. 418; rev'g 447 F. 2d 358, 144 U.S. App. D.C. 388).

Court costs

Length of delay in implementing retroactive payment order of Commissioner of Department of Human Resources justifies an assessment of costs in form of a \$25 filing fee against administrative officers in their official capacity once petition in nature of mandamus to compel agency action was dismissed as moot after officers tardily performed requested action. *B. Dillard et al. v. J. P. Yeldell et al.* (D.C. App. 1975, 334 A. 2d 578).

Injunction

Property owners who are financially able to repair broken water service pipes connecting District's main water pipe with their private plumbing systems have an adequate remedy against district in seeking money damages; hence preliminary injunction requiring the District to repair or replace the pipes was improvidently issued. *District of Columbia et al. v. North Washington Neighbors, Inc., et al.* (D.C. App. 1975, 336 A.2d 828).

Public works

In order to prevail on claim that District of Columbia had discriminated in provision of municipal services, plaintiffs had to show a substantial inequity in input of municipal services as among various groups and that some logical nexus might be discerned between these inequities and possible discrimination based on race or other suspect classification; such a nexus could be inferred from the linking of present policies to those followed during a prior history of overt racial discrimination. *M. Burner et al. v. W. E. Washington et al.* (1975, 399 F.Supp. 44.).

Respondent superior

District of Columbia, under common law theory of respondent superior, is liable for actions of police inspector who was operating within scope of his duties as senior police officer at scene of unlawful arrests of members of

religious group who were conducting peaceful prayer vigil near White House. *L. Tatum et al. v. R. C. B. Morton et al.* (1974, 402 F.Supp. 719).

Sovereign immunity

District of Columbia may be sued for injuries resulting from defective playground equipment but proof of actual or constructive notice of defect which caused injury is a necessary predicate to its liability, and absent such proof directed verdict is proper. *E. Miller et al. v. District of Columbia* (D.C. App. 1975, 343 A.2d 278).

The doctrine of sovereign immunity did not bar class action on behalf of tenants of rental units of the National Capital Housing Authority against the Commissioner of District of Columbia and the National Capital Housing Authority for injunctive and declaratory relief with respect to rental increases scheduled by the Authority. *C. O. Thompson et al. v. W. Washington, Commissioner etc.* (1973, 497 F. 2d 626, 162 U.S. App. D.C. 39).

Complaint which was brought by victim of shooting committed by police officer and which sought to hold police chief liable for negligence in hiring the officer and in failing to train and supervise him adequately and to hold the District of Columbia liable for negligence on the same grounds and vicariously liable for negligence of the police chief stated a cause of action against the District of Columbia and police chief on common-law grounds, notwithstanding fact that the officer was out of uniform at time of the alleged assault on plaintiff. *D. S. Marusa v. District of Columbia et al.* (1973, 484 F. 2d 828, 157 U.S. App D.C. 348).

Federal Tort Claims Act in no way controls existence or scope of local government's immunity from suit. *Id.*

Action against the mayor of the District of Columbia and others seeking relief with respect to racial discrimination against Negro employees in the department of licenses and inspections was not barred by doctrine of sovereign immunity; the courts have power under the Constitution to remedy racial discrimination by a public agency in any form. *J. T. Watkins et al. v. W. E. Washington et al.* (1973, 366 F.Supp. 941; aff'd 505 F.2d 477, 164 U.S. App. D.C. 370).

District of Columbia is immune from suit for torts of agents under doctrine of municipal immunity only if act complained of was committed in exercise of discretionary function, and if act is committed in exercise of ministerial function, District must respond. *C. Wade v. District of Columbia* (D.C. App. 1973, 310 A. 2d 857).

Municipal immunity of District of Columbia is matter of common-law theory of municipal governmental immunity as developed in case law of jurisdiction, and is not derived from sovereignty of United States or limited to same extent as that of Federal government under Federal Tort Claims Act. *Id.*

District of Columbia may be sued under common-law doctrine of respondent superior for intentional torts of its employees acting within scope of their employment. *Id.*

Suit which sought to recover damages for loss of property stored in a warehouse partially destroyed by rioting mobs and which was based on allegation of negligent failure to provide against such an occurrence failed to state a valid claim for relief against District of Columbia. *D. Amos v. District of Columbia* (D.C. App. 1973, 309 A. 2d 305).

Absent legislation to contrary, District of Columbia is not liable for losses incurred by actions of riotous persons as a result of failure of District or its officers to maintain public order. *Id.*

§1-103. Commissioner and Council members made officers of the corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 1A.—SELF-GOVERNMENT**SUBCHAPTER I.—GENERAL PROVISIONS****Sec.**

- 1-121. Purposes.
- 1-122. Definitions.
- 1-123. Charter preamble.
- 1-124. Legislative power.
- 1-125. Charter amending procedure.
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- 1-127. Congressional action on certain District matters.
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- 1-131. Abolishment of existing government.
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- 1-141. Creation—Membership—Personnel—Vacancies.
- 1-142. Qualifications for holding office.
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- 1-144. Powers.
- 1-145. Chairman.
- 1-146. Acts—Resolutions—Requirements for quorum.
- 1-146a. Definitions and words denoting number, gender, and so forth in acts and resolutions.
- 1-146b. Enacting and resolving clauses in acts and resolutions—Numbering of sections.
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- 1-162. Powers and duties.
- 1-163. Municipal planning.

SUBCHAPTER V.—MISCELLANEOUS

- 1-171. Advisory Neighborhood Commissions.
- 1-171a. Advisory Neighborhood Commission areas.
- 1-171b. Single-member districts—Adjustments.
- 1-171c. Establishment of Advisory Neighborhood Commissions.
- 1-171d. Members of Advisory Neighborhood Commissions—Qualifications—Nominations.
- 1-171e. Elections for members of Advisory Neighborhood Commissions—Term of office—Vacancies—Change of residency by member.
- 1-171f. Determination of winners in elections for members of Advisory Neighborhood Commissions.
- 1-171g. Boundary changes for Advisory Neighborhood Commission areas and single-member districts.
- 1-171h. Administration—Challenges—Definition.

SUBCHAPTER I.—GENERAL PROVISIONS**§ 1-121. Purposes.**

(a) Subject to the retention by Congress of the ultimate legislative authority over the Nation's Capital granted by article I, section 8, of the Constitution, the intent of Congress is to delegate certain legislative powers to the government of the District of Columbia; authorize the election of certain local officials by the registered qualified electors in the District of Columbia; grant to the inhabitants of the District of Columbia powers of local self-government; to modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia; and, to the greatest extent possible, consistent with the constitutional mandate, relieve Con-

gress of the burden of legislating upon essentially local District matters.

(b) Congress further intends to implement certain recommendations of the Commission on the Organization of the Government of the District of Columbia and take certain other actions irrespective of whether the charter for greater self-government provided for in title IV of this Act is accepted or rejected by the registered qualified electors of the District of Columbia. (Dec. 24, 1973, Pub. L. 93-198, title I, § 102, 87 Stat. 777.)

REFERENCE IN TEXT

"Title IV of this Act", referred to in subsec. (b), is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

SHORT TITLE

Section 101 of Act Dec. 24, 1973, Pub. L. 93-198, provided: "This Act [consisting of the titles and sections enumerated in the following table of contents] may be cited as the 'District of Columbia Self-Government and Governmental Reorganization Act'." For classification of the Act to the Code, see Parallel Reference Tables.

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- Sec. 101. Short title.
- Sec. 102. Statement of purposes.
- Sec. 103. Definitions.

TITLE II—GOVERNMENTAL REORGANIZATION

- Sec. 201. Redevelopment Land Agency.
- Sec. 202. National Capital Housing Authority.
- Sec. 203. National Capital Planning Commission and municipal planning.
- Sec. 204. District of Columbia Manpower Administration.

TITLE III—DISTRICT CHARTER PREAMBLE, LEGISLATIVE POWER, AND CHARTER AMENDING PROCEDURE

- Sec. 301. District Charter preamble.
- Sec. 302. Legislative power.
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TITLE IV—THE DISTRICT CHARTER**PART A—THE COUNCIL****Subpart 1—Creation of the Council**

- Sec. 401. Creation and membership.
- Sec. 402. Qualifications for holding office.
- Sec. 403. Compensation.
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- Sec. 411. The Chairman.
- Sec. 412. Acts, resolutions, and requirements for quorum.
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PART B—THE MAYOR

- Sec. 421. Election, qualifications, vacancy and compensation.
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- Sec. 431. Judicial powers.
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- Sec. 461. District's authority to issue and redeem general obligation bonds for capital projects.
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- Sec. 463. Publication of borrowing legislation.
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- Sec. 481. Special tax.

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- Sec. 489. District's contributions to the Washington Metropolitan Area Transit Authority.
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PART F—INDEPENDENT AGENCIES

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- Sec. 492. Zoning Commission.
- Sec. 493. Public Service Commission.
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- Sec. 501. Duties of the Mayor, Council, and Federal Office of Management and Budget.
- Sec. 502. Authorization of appropriations.

TITLE VI—RESERVATION OF CONGRESSIONAL AUTHORITY

- Sec. 601. Retention of constitutional authority.
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- Sec. 721. Powers of the President during transitional period.
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- Sec. 736. Independent audit.
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- Sec. 739. National Capital Service Area.
- Sec. 740. Emergency control of police.
- Sec. 741.³ Holding office in the District.
- Sec. 742. Open meetings.
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PART F—RULES OF CONSTRUCTION

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PART G—EFFECTIVE DATES

- Sec. 771. Effective dates.

EFFECTIVE DATES

Section 771, Part G of title VII, Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 836, as amended Apr. 17, 1974, Pub. L. 93-268, § 3(c), 88 Stat. 87; Aug. 29, 1974, Pub. L. 93-395, § 1(8), 88 Stat. 793, provided:

"Sec. 771. (a) Titles I and V, and parts A and G, and section 722 of title VII shall take effect on the date of enactment of this Act.

"(b) Sections 712, 713, 714, and 715 of title VII, and section 401(b) of title IV, and title II shall take effect July 1, 1974, except that any provision thereof which in effect transfers authority to appoint any citizen member of the National Capital Planning Commission or the District of Columbia Redevelopment Land Agency shall take effect January 2, 1975.

"(c) Titles III and IV, except section 401(b) of title IV, shall take effect January 2, 1975, if title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum.

"(d) Title VI and parts D and F and sections 711, 716, 717, 718, 719, 721, and 723 of title VII shall take effect only if and upon the date that title IV becomes effective.

¹ Added, Pub. L. 93-268, § 3(b).

² Amended, D.C. Law 1-27, § 2(b), 22 DCR 2471.

³ Repealed, Pub. L. 93-268, § 4(c).

"(e) Part E of title VII shall take effect on the date on which title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum."

CHARTER REFERENDUM

Part A of title VII of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 817, as amended Apr. 24, 1974, Pub. L. 93-272, 88 Stat. 93, provided:

REFERENDUM

SEC. 701. On a date to be fixed by the Board of Election,¹ not more than five months after the date of enactment of this Act, a referendum (in this part referred to as the "charter referendum") shall be conducted to determine whether the registered qualified electors of the District accept the charter set forth as title IV of this Act.

BOARD OF ELECTIONS AUTHORITY

SEC. 702. (a) The Board of Elections shall conduct the charter referendum and certify the results thereof as provided in this part.

(b) Notwithstanding the fact that such section does not otherwise take effect unless the charter is accepted under this title, the applicable provisions of part E of title VII of this Act shall govern the Board of Elections in the performance of its duties under this Act.

REFERENDUM BALLOT AND NOTICE OF VOTING

SEC. 703. (a) The charter referendum ballot shall contain the following, with a blank space appropriately filled: "The District of Columbia Self-Government and Governmental Reorganization Act, enacted _____ [Dec. 24, 1973], proposes to establish a charter for the governance of the District of Columbia, but provides that the charter shall take effect only if it is accepted by a majority of the registered qualified voters of the District voting on this issue.

"Indicate in one of the squares provided below whether you are for or against the charter.

☐ For the charter.

☐ Against the charter.

"In addition, the Act referred to above authorizes the establishment of advisory neighborhood councils if a majority of the registered qualified voters of the District voting on this issue in this referendum vote for the establishment of such councils.

"Indicate in one of the squares provided below whether you are for or against the establishment of Advisory Neighborhood Councils.

☐ For Advisory Neighborhood Councils

☐ Against Advisory Neighborhood Councils."

(b) Voting may be by paper ballot or by voting machine. The Board of Elections may make such changes in the second and fourth paragraphs of the charter referendum ballot as it determines to be necessary to permit the use of voting machines if such machines are used.

(c) Not less than five days before the date of the charter referendum, the Board of Elections shall mail to each registered qualified elector (1) a sample of the charter referendum ballot, and (2) information showing the polling place of such elector and the date and hours of voting.

(d) Not less than one day before the charter referendum, the Board of Elections shall publish, in one or more newspapers of general circulation published in the District, a list of the polling places and the date and hours of voting.

ACCEPTANCE OR NONACCEPTANCE OF CHARTER

SEC. 704. (a) If a majority of the registered qualified electors voting in the charter referendum vote for the charter, the charter shall be considered accepted as of the time the Board of Elections certifies² the result of the charter referendum to the President of the United States, as provided in subsection (b).

(b) The Board of Elections shall, within a reasonable time, but in no event more than thirty days after the date of the charter referendum, certify the results of the charter referendum to the President of the United States

and to the Secretary of the Senate and the Clerk of the House of Representatives.

CROSS REFERENCE

Reservation of Congressional authority, see §§ 1-126, 1-127, 1-147, 47-228.

§ 1-122. Definitions.

For the purposes of this Act—

(1) The term "District" means the District of Columbia.

(2) The term "Council" means the Council of the District of Columbia provided for by subchapter III of this chapter.

(3) The term "Commissioner" means the Commissioner of the District of Columbia established under Reorganization Plan Numbered 3 of 1967.

(4) The term "District of Columbia Council" means the Council of the District of Columbia established under Reorganization Plan Numbered 3 of 1967.

(5) The term "Chairman" means, unless otherwise provided in this Act, the Chairman of the Council provided for by subchapter III of this chapter.

(6) The term "Mayor" means the Mayor provided for by subchapter IV of this chapter.

(7) The term "act" includes any legislation passed by the Council, except where the term "Act" is used to refer to this Act or other Acts of Congress herein specified.

(8) The term "capital project" means (A) any physical public betterment or improvement and any preliminary studies and surveys relative thereto; (B) the acquisition of property of a permanent nature; or (C) the purchase of equipment for any public betterment or improvement when first erected or acquired.

(9) The term "pending", when applied to any capital project, means authorized but not yet completed.

(10) The term "District revenues" means all funds derived from taxes, fees, charges, and miscellaneous receipts, including all annual Federal payments to the District authorized by law, and from the sale of bonds.

(11) The term "election", unless the context otherwise provides, means an election held pursuant to the provisions of this Act.

(12) The terms "publish" and "publication", unless otherwise specifically provided herein, mean publication in a newspaper of general circulation in the District.

(13) The term "District of Columbia courts" means the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(14) The term "resources" means revenues, balances, revolving funds, funds realized from borrowing, and the District share of Federal grant programs.

(15) The term "budget" means the entire request for appropriations and loan or spending authority for all activities of all agencies of the District financed from all existing or proposed resources and shall include both operating and capital expenditures. (Dec. 24, 1973, Pub. L. 93-198, title I, § 103, 87 Stat. 777.)

¹ May 7, 1974, see 20 D.C. Register 964, Apr. 15, 1974.

² Certification of results [approval] of charter referendum published in 21 D.C. Register 651, Oct. 15, 1974.

REFERENCES IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

"Reorganization Plan Numbered 3 of 1967", referred to in pars. (3) and (4), is set out in the Appendix to this title in the main edition.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on date of enactment [Dec. 24, 1973].

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1601, 2-1232.

§ 1-123. Charter preamble.

The charter for the District of Columbia set forth in title IV shall establish the means of governance of the District following its acceptance by a majority of the registered qualified electors of the District voting thereon in the charter referendum held with respect thereto. (Dec. 24, 1973, Pub. L. 93-198, title III, § 301, 87 Stat. 784.)

REFERENCE IN TEXT

"Title IV", referred to in text, is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

§ 1-124. Legislative power.

Except as provided in sections 1-126, 1-147, and 47-228, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this Act subject to all the restrictions and limitations imposed upon the States by the tenth section of the first article of the Constitution of the United States. (Dec. 24, 1973, Pub. L. 93-198, title III, § 302, 87 Stat. 784.)

REFERENCE IN TEXT

"This Act", referred to in text, is in the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

See note under § 1-123.

§ 1-125. Charter amending procedure.

(a) The charter set forth in title IV (including any provision of law amended by such title), except sections 1-141(a) and 1-161(a), and part C of such sections 401(a) and 421(a) [D.C. Code §§ 1-141(a) and 1-161(a)], and part C of such title, may be amended by an act passed by the Council and ratified by a majority of the registered qualified electors of the District voting in the referendum held for such ratification. The Chairman of the Council shall submit all such acts to the Speaker of the House of

Representatives and the President of the Senate on the day the Board of Elections and Ethics certifies that such act was ratified by a majority of the registered qualified electors voting thereon in such referendum.

(b) An amendment to the charter ratified by the registered qualified electors shall take effect only if within thirty-five calendar days (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) of the date such amendment was submitted to the Congress both Houses of Congress adopt a concurrent resolution, according to the procedures specified in section 1-127, approving such amendment.

(c) The Board of Elections and Ethics shall prescribe such rules as are necessary with respect to the distribution and signing of petitions and the holding of elections for ratifying amendments to title IV of this Act according to the procedures specified in subsection (a).

(d) The amending procedure provided in this section may not be used to enact any law or affect any law with respect to which the Council may not enact any act, resolution, or rule under the limitations specified in sections 1-126, 1-147, and 47-228. (Dec. 24, 1973, Pub. L. 93-198, title III, § 303, 87 Stat. 784; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

REFERENCES IN TEXT

"Title IV" and "title IV of this Act", referred to in subsecs. (a) and (c), is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

"Part C of such title", referred to in subsec. (a), consisting of sections 431 to 434, is set out in Title 11, Appendix.

AMENDMENT

1974—Act Aug. 14, 1974, Pub. L. 93-376, amended subsecs. (a) and (c) by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE

See note under § 1-123.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

§ 1-126. Congressional reservation of authority.

Notwithstanding any other provision of this Act, the Congress of the United States reserves the right, at any time, to exercise its constitutional authority as legislature for the District, by enacting legislation for the District on any subject, whether within or without the scope of legislative power granted to the Council by this Act, including legislation to amend or repeal any law in force in the District prior to or after enactment of this Act and any act passed by the Council. (Dec. 24, 1973, Pub. L. 93-198, title VI, § 601, 87 Stat. 813.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

See note under § 1-123.

CROSS REFERENCES

Budget process and limitations on borrowing and spending, see § 47-228.

Limitations on District of Columbia Council, see § 1-147.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-124, 1-125, 1-144.

§ 1-127. Congressional action on certain District matters.

(a) This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed a part of the rule of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rule (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(b) For the purpose of this section, "resolution" means only a concurrent resolution, the matter after the resolving clause of which is as follows: "That the _____ approves/disapproves of the action of the District of Columbia Council described as follows: _____", the blank spaces therein being appropriately filled, and either approval or disapproval being appropriately indicated; but does not include a resolution which specifies more than one action.

(c) A resolution with respect to Council action shall be referred to the Committee on the District of Columbia of the House of Representatives, or the Committee on the District of Columbia of the Senate, by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(d) If the committee to which a resolution has been referred has not reported it at the end of twenty calendar days after its introduction, it is in order to move to discharge the committee from further consideration of any other resolution with respect to the same Council action which has been referred to the committee.

(e) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same action), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(f) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same action.

(g) When the committee has reported, or has been discharged from further consideration of, a

resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(h) Debate on the resolution shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(i) Motions to postpone made with respect to the discharge from committee or the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(j) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate. (Dec. 24, 1973, Pub. L. 93-198, title VI, § 604, 87 Stat. 816.)

EFFECTIVE DATE

See note under § 1-123.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-125, 1-144, 1-147.

§ 1-128. Construction.

(a) To the extent that any provisions of this Act are inconsistent with the provisions of any other laws the provisions of this Act shall prevail and shall be deemed to supersede the provisions of such laws.

(b) No law or regulation which is in force on January 2, 1975, shall be deemed amended or repealed by this Act except to the extent specifically provided herein or to the extent that such law or regulation is inconsistent with this Act, but any such law or regulation may be amended or repealed by act or resolution as authorized in this Act, or by Act of Congress, except that, notwithstanding the provisions of section 1-1105a, such authority to repeal shall not be construed as authorizing the Council to repeal or otherwise alter, by amendment or otherwise, any provision of subchapter III of chapter 73 of title 5, United States Code, in whole or in part. (Dec. 24, 1973, Pub. L. 93-198, title VII, §§ 717(b), 761, 87 Stat. 820, 836.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774).

CODIFICATION

Subsections (a) and (b) are based on sections 761 and 717(b), respectively, of Act Dec. 24, 1973.

In subsec. (b), "January 2, 1975" was substituted for "the effective date of title IV of this Act" on authority of sec. 717(d) of the Act which is set out as a note under § 1-121.

EFFECTIVE DATE

See note under § 1-123.

NOTES TO DECISIONS

Prior specific statute

Given the express intent of Congress to allow certain meetings of the Board of Education to be closed and the embodiment of that intent in a specific statute (§ 31-101), that prior statute remains in effect as a qualification of section 1-1503a requiring meetings of the District government to be open to the public. *R. Goodwin et al. v. District of Columbia Board of Education et al.* (D.C. App. 1975, 343 A.2d 63).

SUBCHAPTER II.—SUCCESSION IN GOVERNMENT

§ 1-131. Abolishment of existing government.

The District of Columbia Council, the offices of Chairman of the District of Columbia Council, Vice Chairman of the District of Columbia Council, and the seven other members of the District of Columbia Council, and the offices of the Commissioner of the District of Columbia and Assistant to the Commissioner of the District of Columbia, as established by Reorganization Plan Numbered 3 of 1967, are abolished as of noon January 2, 1975. This subsection¹ shall not be construed to reinstate any governmental body or office in the District abolished in said plan or otherwise heretofore. (Dec. 24, 1973. Pub. L. 93-198, title VII, § 711, 87 Stat. 818.)

REFERENCE IN TEXT

"Reorganization Plan Numbered 3 of 1967", referred to in text, is set out in the Appendix to this title in the main edition.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this subchapter.

PENDING ACTIONS AND PROCEEDINGS

Section 715 of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 819, provided:

"(a) No suit, action, or other judicial proceeding lawfully commenced by or against any officer or agency in his or its official capacity or in relation to the exercise of his or its official functions, shall abate by reason of the taking effect of any provision of this Act; but the court, unless it determines that the survival of such suit, action, or other proceedings is not necessary for purposes of settlement of the questions involved, shall allow the same to be maintained, with such substitutions as to parties as are appropriate.

"(b) No administrative action or proceeding lawfully commenced shall abate solely by reason of the taking effect of any provision of this Act, but such action or proceeding shall be continued with such substitutions as to parties and officers or agencies as are appropriate."

TRANSFER OF PERSONNEL, PROPERTY, AND FUNDS

Section 713 of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 818, provided:

"(a) In each case of the transfer, by any provision of this Act, of functions to the Council, to the Mayor, or to any agency or officer, there are hereby authorized to be transferred (as of the time of such transfer of functions) to the Council, to the Mayor, to such agency, or to the agency of which such officer is the head, for use in the administration of the functions of the Council or such agency or officer, the personnel (except the Commissioner of the District of Columbia, the Assistant to the Com-

missioner, the Chairman of the District of Columbia Council, the Vice Chairman of the District of Columbia Council, the other members thereof, all of whose offices are abolished by this Act), property, records, and unexpended balances of appropriations and other funds which relate primarily to the functions so transferred.

"(b) If any question arises in connection with the carrying out of subsection (a), such questions shall be decided—

"(1) in the case of functions transferred from a Federal officer or agency, by the Director of the Office of Management and Budget; and

"(2) in the case of other functions (A) by the Council, or in such manner as the Council shall provide, if such functions are transferred to the Council, and (B) by the Mayor if such functions are transferred to him or to any other officer or agency.

"(c) Any of the personnel authorized to be transferred to the Council, the Mayor, or any agency by this section which the Council or the head of such agency shall find to be in excess of the personnel necessary for the administration of its or his function shall, in accordance with law, be retransferred to other positions in the District or Federal Government or be separated from the service.

"(d) No officer or employee shall, by reason of his transfer to the District government under this Act or his separation from service under this Act, be deprived of any civil service rights, benefits, and privileges held by him prior to such transfer or any right of appeal or review he may have by reason of his separation from service."

VACANCIES RESULTING FROM ABOLISHMENT OF OFFICES OF COMMISSIONER AND ASSISTANT TO THE COMMISSIONER

Section 716 of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 820, provided: "Until the 1st day of July next after the first Mayor takes office under this Act no vacancy occurring in any District agency by reason of section 711 [this section], abolishing the offices of Commissioner of the District of Columbia and Assistant to the Commissioner, shall affect the power of the remaining members of such agency to exercise its functions; but such agency may take action only if a majority of the members holding office vote in favor of it."

§ 1-132. Certain delegated functions—Functions of certain agencies.

No function of the District of Columbia Council (established under Reorganization Plan Numbered 3 of 1967) or of the Commissioner of the District of Columbia which such District of Columbia Council or Commissioner has delegated to an officer, employee, or agency (including any body of or under such agency) of the District, nor any function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the District Public Service Commission, Zoning Advisory Council, Board of Zoning Adjustment, Office of the Recorder of Deeds, or Armory Board, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 1-144(a). Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this chapter, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 712, 87 Stat. 818.)

REFERENCES IN TEXT

"Reorganization Plan Numbered 3 of 1967", referred to in text, is set out in the Appendix to this title in the main edition.

"This chapter", referred to in text, was in the original "this Act", meaning the District of Columbia Self-Govern-

¹ So in original. Probably should be "section".

ment and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on July 1, 1974.

§ 1-133. Existing statutes, regulations, and other actions.

(a) Any statute, regulation, or other action in respect of (and any regulation or other action issued, made, taken, or granted by) any officer or agency from which any function is transferred by this Act shall, except to the extent modified or made inapplicable by or under authority of law, continue in effect as if such transfer had not been made; but after such transfer, references in such statute, regulation, or other action to an officer or agency from which a transfer is made by this Act shall be held and considered to refer to the officer or agency to which the transfer is made.

(b) As used in subsection (a), the term "other action" includes, without limitation, any rule, order, contract, compact, policy, determination, directive, grant, authorization, permit, requirement, or designation.

(c) Unless otherwise specifically provided in this Act, nothing contained in this Act shall be construed as affecting the applicability to the District government of personnel legislation relating to the District government until such time as the Council may otherwise elect to provide equal or equivalent coverage. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 714, 87 Stat. 819.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

Section effective July 1, 1974, see sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-162.

SUBCHAPTER III.—COUNCIL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1-122.

§ 1-141. Creation—Membership—Personnel—Vacancies.

(a) There is established a Council of the District of Columbia; and the members of the Council shall be elected by the registered qualified electors of the District.

(b) (1) The Council established under subsection (a) shall consist of thirteen members elected on a partisan basis. The Chairman and four members shall be elected at large in the District, and eight members shall be elected one each from the eight election wards established, from time to time, under chapter 11 of this title. The term of office of the members of the Council shall be four years, except as provided in paragraph (3), and shall begin at noon on January 2 of the year following their election.

(2) In the case of the first election held for the office of member of the Council after January 2, 1975, not more than two of the at-large members (excluding the Chairman) shall be nominated by the same political party. Thereafter, a political party may nominate a number of candidates for the office of at-large member of the Council equal to one less than the total number of at-large members (excluding the Chairman) to be elected in such election.

(3) To fill a vacancy in the Office of Chairman, the Board of Elections and Ethics shall hold a special election in the District on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Chairman to fill a vacancy in the Office of Chairman shall take office on the day in which the Board of Elections and Ethics certifies his election, and shall serve as Chairman only for the remainder of the term during which such vacancy occurred. When the Office of Chairman becomes vacant, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as Chairman pro tempore until the election of a new Chairman.

(4) Of the members first elected after January 2, 1975, the Chairman and two members elected at-large and four of the members elected from election wards shall serve for four-year terms; and two of the at-large members and four of the members elected from election wards shall serve for two-year terms. The members to serve the four-year terms and the members to serve the two-year terms shall be determined by the Board of Elections and Ethics by lot, except that not more than one of the at-large members nominated by any political party shall serve for any such four-year term.

(c) The Council may establish and select such other officers and employees as it deems necessary and appropriate to carry out the functions of the Council.

(d) (1) In the event of a vacancy in the Council of a member elected from a ward, the Board of Elections and Ethics shall hold a special election in such ward to fill such vacancy on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this subsection. The person elected as a member to fill a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred.

(2) In the event of a vacancy in the office of Mayor, and if the Chairman becomes a candidate

for the office of Mayor to fill such vacancy, the office of Chairman shall be deemed vacant as of the date of the filing of his candidacy. In the event of a vacancy in the Council of a member elected at large, other than a vacancy in the office of Chairman, who is affiliated with a political party, the central committee of such political party shall appoint a person to fill such vacancy, until the Board of Elections and Ethics can hold a special election to fill such vacancy, and such special election shall be held on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise be held under the provision of this subsection. The person appointed to fill such vacancy shall take office on the date of his appointment and shall serve as a member of the Council until the day on which the Board certifies the election of the member elected to fill such vacancy in either a special election or a general election. The person elected as a member to fill such a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred. With respect to a vacancy on the Council of a member elected at large who is not affiliated with any political party, the Council shall appoint a similarly non-affiliated person to fill such vacancy until such vacancy can be filled in a special election in the manner prescribed in this paragraph. Such person appointed by the Council shall take office and serve as a member at the same time and for the same term as a member appointed by a central committee of a political party.

(3) Notwithstanding any other provision of this section, at no time shall there be more than three members (including the Chairman) serving at large on the Council who are affiliated with the same political party. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 401, 87 Stat. 785; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458; Aug. 29, 1974, Pub. L. 93-395, § 1(2), 88 Stat. 793.)

CODIFICATION

In subsec. (b) (2) and (4), "January 2, 1975" has been substituted for "the effective date of this title", referring to the effective date of title IV of Act Dec. 24, 1973, on authority of sec. 717 of the Act which is set out as a note under § 1-121.

AMENDMENTS

1974—Section 1(2) of Act Aug. 29, 1974, Pub. L. 93-395, amended subsec. (b) by redesignating par. (3) as par. (4), and by inserting a new par. (3).

Section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, amended subsecs. (b) and (d) by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE OF 1974 AMENDMENT BY PUB. L. 93-376

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that subsec. (b) of this section is July 1, 1974, and that

the remaining subsections of this section and the other sections in this subchapter are effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this subchapter.

CROSS REFERENCE

Political activity restrictions on Federal and District employees, see 5 U.S.C. 7324.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-125, 1-146c, 1-1502, 1-1601, 31-1702, 31-1902, 45-1641.

NOTES TO DECISIONS

Constitutionality

Complaint by qualified voters seeking judgment declaring unconstitutional sections of District of Columbia Self-Government and Governmental Reorganization Act passed by Congress and approved by President and voters of District and an injunction ordering placing on general election ballot Democratic candidates for at-large membership on District of Columbia Council who finished third or fourth in primary and the Republican candidate who finished third in primary with instructions that voters could vote for any four candidates would be dismissed in light of imminence of November election, absence of any demonstration of constitutional invalidity of section and the desire to give Congress opportunity to reform its legislation. *E. Dulcan et al. v. R. Martin, Chairman, et al.* (1974, 64 F.R.D. 327).

§ 1-142. Qualifications for holding office.

No person shall hold the office of member of the Council, including the office of Chairman, unless he (a) is a qualified elector, (b) is domiciled in the District and if he is nominated for election from a particular ward, resides in the ward from which he is nominated, (c) has resided and been domiciled in the District for one year immediately preceding the day on which the general or special election for such office is to be held, and (d) holds no public office (other than his employment in and position as a member of the Council), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall prohibit any such person, while a member of the Council, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a Reserve component of an armed force of the United States other than a member serving on active duty under a call for more than thirty days. A member of the Council shall forfeit his office upon failure to maintain the qualifications required by this section, and, in the case of the Chairman, section 1-143(c). (Dec. 24, 1973, Pub. L. 93-198, title IV, § 402, 87 Stat. 786.)

EFFECTIVE DATE

See note under § 1-141.

§ 1-143. Compensation.

(a) Each member of the Council shall receive compensation, payable in periodic installments, at a rate equal to the maximum rate as may be established from time to time for grade 12 of the General Schedule under section 5332 of title 5 of the United States Code. On and after the end

of the two-year period beginning on the day the members of the Council first elected under this Act take office, the Council may, by act, increase or decrease such rate of compensation. Such change in compensation, upon enactment by the Council in accordance with the provisions of this chapter, shall apply with respect to the term of members of the Council beginning after the date of enactment of such change.

(b) All members of the Council shall receive additional allowances for actual and necessary expenses incurred in the performance of their duties of office as may be approved by the Council.

(c) The Chairman shall receive, in addition to the compensation to which he is entitled as a member of the Council, \$10,000 per annum, payable in equal installments, for each year he serves as Chairman, but the Chairman shall not engage in any employment (whether as an employee or as a self-employed individual) or hold any position (other than his position as Chairman), for which he is compensated in an amount in excess of his actual expenses in connection therewith. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 403, 87 Stat. 787.)

REFERENCE IN TEXT

"This Act", referred to in the second sentence of subsec. (a), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). "This chapter", referred to in the last sentence of subsec. (a), was in the original "this Act". For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

See note under § 1-141.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-142.

§ 1-144. Powers.

(a) Subject to the limitations specified in sections 1-126, 1-127, 1-147, and 47-228, the legislative power granted to the District by this Act is vested in and shall be exercised by the Council in accordance with this Act. In addition, except as otherwise provided in this Act, all functions granted to or imposed upon, or vested in or transferred to the District of Columbia Council, as established by Reorganization Plan Numbered 3 of 1967, shall be carried out by the Council in accordance with the provisions of this Act.

(b) The Council shall have authority to create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality.

(c) The Council shall adopt and publish rules of procedures which shall include provisions for adequate public notification of intended actions of the Council.

(d) Every act shall be published and codified upon becoming law as the Council may direct.

(e) An act passed by the Council shall be presented by the Chairman of the Council to the Mayor, who shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after the act is presented to him, either approve or disapprove

such act. If the Mayor shall approve such act, he shall indicate the same by affixing his signature thereto, and such act shall become law subject to the provisions of section 1-147(c). If the Mayor shall disapprove such act, he shall, within ten calendar days (excluding Saturdays, Sundays, and holidays) after it is presented to him, return such act to the Council setting forth in writing his reasons for such disapproval. If any act so passed shall not be returned to the Council by the Mayor within ten calendar days after it shall have been presented to him, the Mayor shall be deemed to have approved it, and such act shall become law subject to the provisions of section 1-147(c). If, within thirty calendar days after an act has been timely returned by the Mayor to the Council with his disapproval, two-thirds of the members of the Council present and voting vote to reenact such act, the act so reenacted shall be transmitted by the Chairman to the President of the United States. Subject to the provisions of section 1-147(c), such act, except any act of the Council submitted to the President in accordance with the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.), shall become law at the end of the thirty day period beginning on the date of such transmission, unless during such period the President disapproves such act.

(f) In the case of any budget act adopted by the Council pursuant to section 47-224 and submitted to the Mayor in accordance with subsection (e) of this section, the Mayor shall have power to disapprove any items or provisions, or both, of such act and approve the remainder. In any case in which the Mayor so disapproves of any item or provision, he shall append to the act when he signs it a statement of the item or provision which he disapproves, and shall, within such ten-day period, return a copy of the act and statement with his objections to the Council. If, within thirty calendar days after any such item or provision so disapproved has been timely returned by the Mayor to the Council, two-thirds of the members of the Council present and voting vote to reenact any such item or provision, such item or provision so reenacted shall be transmitted by the Chairman to the President of the United States. In any case in which the Mayor fails to timely return any such item or provision so disapproved to the Council, the Mayor shall be deemed to have approved such item or provision not returned, and such item or provision not returned shall be transmitted by the Chairman to the President of the United States. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 404, 87 Stat. 787.)

REFERENCE IN TEXT

"This Act", referred to in subsec. (a), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

"Reorganization Plan Numbered 3 of 1967", referred to in subsec. (a), is set out in the Appendix to this title in the main edition.

EFFECTIVE DATE

See note under § 1-141.

CROSS REFERENCES

Certain delegated functions and functions of certain agencies, see § 1-132.

Elections, legislative authority of Council, see § 1-1105a.
Open meetings, availability of written transcript, see § 1-1503a.

Regulations in nature of a law or municipal ordinance adopted by Council to be published in Municipal Code, see § 1-1602.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-132, 2-1233, 5-103a, 31-1901.

§ 1-145. Chairman.

(a) The Chairman shall be the presiding officer of the Council.

(b) When the Office of Mayor is vacant, the Chairman shall act in his stead. While the Chairman is Acting Mayor he shall not exercise any of his authority as Chairman or member of the Council. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 411, 87 Stat. 788.)

EFFECTIVE DATE

See note under § 1-141.

§ 1-146. Acts—Resolutions—Requirements for quorum.

(a) The Council, to discharge the powers and duties imposed herein, shall pass acts and adopt resolutions, upon a vote of a majority of the members of the Council present and voting, unless otherwise provided in this Act or by the Council. The Council shall use acts for all legislative purposes. Each proposed act shall be read twice in substantially the same form, with at least thirteen days intervening between each reading. Upon final adoption by the Council each act shall be made immediately available to the public in a manner which the Council shall determine. If the Council determines, by a vote of two-thirds of the members, that emergency circumstances make it necessary that an act be passed after a single reading, or that it take effect immediately upon enactment, such act shall be effective for a period of not to exceed ninety days. Resolutions shall be used to express simple determinations, decisions, or directions of the Council of a special or temporary character.

(b) A special election may be called by resolution of the Council to present for an advisory referendum vote of the people any proposition upon which the Council desires to take action.

(c) A majority of the Council shall constitute a quorum for the lawful convening of any meeting and for the transaction of business of the Council, except a lesser number may hold hearings. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 412, 87 Stat. 788.)

REFERENCE IN TEXT

"This Act", referred to in subsec. (a), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

See note under § 1-141.

CROSS REFERENCES

Codification and publication of acts and resolutions, see § 1-1601 et seq.

Enrollment of acts, see § 1-1604.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-147, 1-1602, 47-622.

§ 1-146a. Definitions and words denoting number, gender, and so forth in acts and resolutions.

For the purposes of any act or resolution of the Council of the District of Columbia, unless specifically provided otherwise—

(1) words importing the singular include and apply to several persons, parties, or things;

(2) words importing the plural include the singular;

(3) words importing one gender include and apply to the other gender as well;

(4) words used in the present tense include the future as well as the present;

(5) the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

(6) "officer" includes any person authorized by law to perform the duties of the office;

(7) "signature" or "subscription" includes a mark when the person making it intended that mark as such;

(8) "oath" includes affirmation, and "sworn" includes affirmed; and

(9) "writing" includes printing and typewriting and reproductions of visual symbols by photographing, multigraphing, mimeographing, manifolding, or otherwise. (Sept. 23, 1975, D.C. Law 1-17, § 2, 22 DCR 1990.)

CODIFICATION

Section was enacted as part of the General Legislative Procedures Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

Section 5 of Act Sept. 23, 1975, D.C. Law 1-17, provided "This act shall be effective immediately at the end of the thirty day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) beginning on the date this act is submitted to the Congress, as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of Act Sept. 23, 1975, D.C. Law 1-17, provided "That this act [enacting §§ 146a to 146c] may be cited as the 'General Legislative Procedures Act of 1975'."

CROSS REFERENCE

Rules of construction, generally, see § 49-201 et seq.

§ 1-146b. Enacting and resolving clauses in acts and resolutions—Numbering of sections.

(a) Each act of the Council of the District of Columbia shall have an enacting clause only in the first section of each act and such enacting clause shall be in the following form: "Be it enacted by the Council of the District of Columbia."

(b) Each resolution of the Council of the District of Columbia shall have a resolving clause in the following form: "Resolved, by the Council of the District of Columbia,".

(c) Each section of each act or resolution shall be numbered consecutively. (Sept. 23, 1975, D.C. Law 1-17, § 3, 22 DCR 1991.)

CODIFICATION

Section was enacted as part of the General Legislative Procedures Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

See note under § 1-146a.

§ 1-146c. Additional definitions of terms in acts and resolutions.

For the purposes of any act or resolution of the Council of the District of Columbia, unless specifically provided otherwise—

(a) The term "Council" means the Council of the District of Columbia established under section 1-141.

(b) The term "Mayor" means the Mayor of the District of Columbia established under section 1-161.

(c) The term "Act" means an Act of the Congress.

(d) The term "act" means an act of the Council. (Sept. 23, 1975, D.C. Law 1-17, § 4, 22 DCR 1992.)

CODIFICATION

Section was enacted as part of the General Legislative Procedures Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

See note under § 1-146a.

§ 1-147. Limitations.

(a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to—

(1) impose any tax on property of the United States or any of the several States;

(2) lend the public credit for support of any private undertaking;

(3) enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District;

(4) enact any act, resolution, or rule with respect to any provision of title 11 (relating to organization and jurisdiction of the District of Columbia courts);

(5) impose any tax on the whole or any portion of the personal income, either directly or at the source thereof, of any individual not a resident of the District (the terms "individual" and "resident" to be understood for the purposes of this paragraph as they are defined in section 47-1551c);

(6) enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5-405, and in effect on December 24, 1973;

(7) enact any act, resolution, or regulation with respect to the Commission on Mental Health;

(8) enact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts, or relating to the duties or powers of the United States attorney or the United States Marshal for the District of Columbia; or

(9) enact any act, resolution, or rule with respect to any provision of title 23 (relating to criminal procedure), or with respect to any provision of any law codified in title 22 or 24 (relating to crimes and treatment of prisoners) during the twenty-four full calendar months immediately

following the day on which the members of the Council first elected pursuant to this Act take office.

(b) Nothing in this Act shall be construed as vesting in the District government any greater authority over the National Zoological Park, the National Guard of the District of Columbia, the Washington Aqueduct, the National Capital Planning Commission, or, except as otherwise specifically provided in this Act, over any Federal agency, than was vested in the Commissioner prior to January 2, 1975.

(c) (1) Except acts of the Council which are submitted to the President in accordance with the Budget and Accounting Act, 1921 (31 U.S.C. 1 et seq.) any act which the Council determines according to section 1-146(a), should take effect immediately because of emergency circumstances, and acts proposing amendments to title IV of this Act, the Chairman of the Council shall transmit to the Speaker of the House of Representatives, and the President of the Senate a copy of each act passed by the Council and signed by the Mayor, or vetoed by the Mayor and repassed by two-thirds of the Council present and voting (and with respect to which the President has not sustained the Mayor's veto), and every act passed by the Council and allowed to become effective by the Mayor without his signature. Except as provided in paragraph (2), no such act shall take effect until the end of the 30-day period (excluding Saturdays, Sundays, and holidays, and any day on which either House is not in session) beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate and then only if during such 30-day period both Houses of Congress do not adopt a concurrent resolution disapproving such act. The provisions of section 1-127, except subsections (d), (e), and (f) of such section, shall apply with respect to any concurrent resolution disapproving any act pursuant to this paragraph.

(2) In the case of any such act transmitted by the Chairman with respect to any Act codified in titles 22, 23, or 24, such act shall take effect at the end of the 30-day period beginning on the day such act is transmitted by the Chairman to the Speaker of the House of Representatives and the President of the Senate only if during such 30-day period one House of Congress does not adopt a resolution disapproving such act. The provisions of section 1-127 relating to an expedited procedure for consideration of resolutions, shall apply to a simple resolution disapproving such act as specified in this paragraph. (Dec. 24, 1973, Pub. L. 93-198, title VI, § 602, 87 Stat. 813.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). "Title IV of this Act", referred to in subsec. (c) (1), is title IV (consisting of sections 401 to 495) of such Act. For classification of the Act to the Code, see Parallel Reference Tables.

CODIFICATION

In subsec. (a) (6), "December 24, 1973" has been substituted for "the date of enactment of this Act".

In subsec. (b), "January 2, 1975" has been substituted for "the effective date of title IV of this Act", on authority of section 717(d) of Act Dec. 24, 1973, which is set out as a note under § 1-121.

EFFECTIVE DATE

See note under § 1-141.

CROSS REFERENCE

Limitation on Council to repeal or alter any provision of subchapter III (relating to political activity restrictions) of chapter 73 of title 5, U.S. Code, see § 1-128.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-124, 1-125, 1-144, 11-2609, section 718 of title 11 Appendix, 47-254.

§ 1-148. Investigations—Subpenas—Oaths.

(a) The Council, or any committee or person authorized by it, shall have power to investigate any matter relating to the affairs of the District, and for that purpose may require the attendance and testimony of witnesses and the production of books, papers, and other evidence. For such purpose any member of the Council (if the Council is conducting the inquiry) or any member of the committee may issue subpenas, and administer oaths upon resolution adopted by the Council or committee, as appropriate.

(b) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Council by resolution may refer the matter to the Superior Court of the District of Columbia, which may by order require such person to appear and give or produce testimony or books, papers, or other evidence, bearing upon the matter under investigation. Any failure to obey such order may be punished by such Court as a contempt thereof as in the case of failure to obey a subpena issued, or to testify, in a case pending before such Court. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 413, 87 Stat. 789.)

EFFECTIVE DATE

See note under § 1-141.

SUBCHAPTER IV.—MAYOR

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1-122.

§ 1-161. Election — Qualifications — Vacancy — Compensation.

(a) There is established the Office of Mayor of the District of Columbia; and the Mayor shall be elected by the registered qualified electors of the District.

(b) The Mayor established by subsection (a) shall be elected, on a partisan basis, for a term of four years beginning at noon on January 2 of the year following his election.

(c) (1) No person shall hold the Office of Mayor unless he (A) is a qualified elector, (B) has resided and been domiciled in the District for one year immediately preceding the day on which the general or special election for Mayor is to be held, and (C) is not engaged in any employment (whether as an employee or as a self-employed individual) and holds no public office or position (other than his employment in and position as Mayor), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall be construed as prohibiting such person, while holding the Office of Mayor, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a reserve component of an armed force of the

United States other than a member serving on active duty under a call for more than thirty days. The Mayor shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) To fill a vacancy in the Office of Mayor, the Board of Elections and Ethics shall hold a special election in the District on the first Tuesday occurring more than one hundred and fourteen days after the date on which such vacancy occurs, unless the Board of Elections and Ethics determines that such vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within sixty days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Mayor to fill a vacancy in the Office of Mayor shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as Mayor only for the remainder of the term during which such vacancy occurred. When the Office of Mayor becomes vacant the Chairman shall become Acting Mayor and shall serve from the date such vacancy occurs until the date on which the Board of Elections and Ethics certifies the election of the new Mayor at which time he shall again become Chairman. While the Chairman is Acting Mayor, the Chairman shall receive the compensation regularly paid the Mayor, and shall receive no compensation as Chairman or member of the Council. While the Chairman is Acting Mayor, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as chairman pro tempore, until the return of the regularly elected Chairman.

(d) The Mayor shall receive compensation, payable in equal installments, at a rate equal to the maximum rate, as may be established from time to time, for level III of the Executive Schedule in section 5314 of title 5 of the United States Code. Such rate of compensation may be increased or decreased by act of the Council. Such change in such compensation, upon enactment by the Council in accordance with the provisions of this chapter, shall apply with respect to the term of Mayor next beginning after the date of such change. In addition, the Mayor may receive an allowance, in such amount as the Council may from time to time establish, for official, reception, and representation expenses, which he shall certify in reasonable detail to the Council. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 421, 87 Stat. 789; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

REFERENCE IN TEXT

"This chapter", referred to in subsec. (d), was in the original "this Act", meaning the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see Parallel Reference Tables.

AMENDMENT

1974—Act Aug. 14, 1974, Pub. L. 93-376, amended subsec. (c) (2) by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, set out as a note under § 1-121, provided in part that this subchapter is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this subchapter.

CROSS REFERENCES

Mayoral vacancy provisions, see §§ 1-141, 1-145.
Political activity restrictions on Federal and District employees, see 5 U.S.C. 7324.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-125, 1-146c, 1-1601, 31-1702, 31-1902, 45-1641.

§ 1-162. Powers and duties.

The executive power of the District shall be vested in the Mayor who shall be the chief executive officer of the District government. In addition, except as otherwise provided in this Act, all functions granted to or vested in the Commissioner of the District of Columbia, as established under Reorganization Plan Numbered 3 of 1967, shall be carried out by the Mayor in accordance with this Act. The Mayor shall be responsible for the proper execution of all laws relating to the District, and for the proper administration of the affairs of the District coming under his jurisdiction or control, including but not limited to the following powers, duties, and functions:

(1) The Mayor may designate the officer or officers of the executive department of the District who may, during periods of disability or absence from the District of the Mayor execute and perform the powers and duties of the Mayor.

(2) The Mayor shall administer all laws relating to the appointment, promotion, discipline, separation, and other conditions of employment of personnel in the office of the Mayor, personnel in executive departments of the District, and members of boards, commissions, and other agencies, who, under laws in effect on the date immediately preceding January 2, 1975, were subject to appointment and removal by the Commissioner of the District of Columbia. All actions affecting such personnel and such members shall, until such time as legislation is enacted by the Council superseding such laws and establishing a permanent District government merit system, pursuant to paragraph (3), continue to be subject to the provisions of Acts of Congress relating to the appointment, promotion, discipline, separation, and other conditions of employment applicable to officers and employees of the District government, to section 713(d) of this Act, and where applicable, to the provisions of the joint agreement between the Commissioners and the Civil Service Commission authorized by Executive Order Numbered 5491 of November 18, 1930, relating to the appointment of District personnel. He shall appoint or assign persons to positions formerly occupied, ex-officio, by the Commissioner of the District of Columbia or by the Assistant to the Commissioner and shall have power to remove such persons from such positions. The officers and employees of each agency with respect to which legislative power is

delegated by this Act and which immediately prior to January 2, 1975, was not subject to the administrative control of the Commissioner of the District, shall continue to be appointed and removed in accordance with applicable laws until such time as such laws may be superseded by legislation passed by the Council establishing a permanent District government merit system pursuant to paragraph (3).

(3) The Mayor shall administer the personnel functions of the District covering employees of all District departments, boards, commissions, offices and agencies, except as otherwise provided by this Act. Personnel legislation enacted by Congress prior to or after January 2, 1975, including, without limitation, legislation relating to appointments, promotions, discipline, separations, pay, unemployment compensation, health, disability and death benefits, leave, retirement, insurance, and veterans' preference applicable to employees of the District government as set forth in section 1-133(c), shall continue to be applicable until such time as the Council shall, pursuant to this section, provide for coverage under a District government merit system. The District government merit system shall be established by act of the Council. The system may provide for continued participation in all or part of the Federal Civil Service System and shall provide for persons employed by the District government immediately preceding the effective date of such system personnel benefits, including but not limited to pay, tenure, leave, residence, retirement, health and life insurance, and employee disability and death benefits, all at least equal to those provided by legislation enacted by Congress, or regulation adopted pursuant thereto, and applicable to such officers and employees immediately prior to the effective date of the system established pursuant to this Act. The District government merit system shall take effect not earlier than one year nor later than five years after January 2, 1975.

(4) The Mayor shall, through the heads of administrative boards, offices, and agencies, supervise and direct the activities of such boards, offices, and agencies.

(5) The Mayor may submit drafts of acts to the Council.

(6) The Mayor may delegate any of his functions (other than the function of approving or disapproving acts passed by the Council or the function of approving contracts between the District and the Federal Government under section 1-826) to any officer, employee, or agency of the executive office of the Mayor, or to any director of an executive department who may, with the approval of the Mayor, make a further delegation of all or a part of such functions to subordinates under his jurisdiction.

(7) The Mayor shall appoint a City Administrator, who shall serve at the pleasure of the Mayor. The City Administrator shall be the chief administrative officer of the Mayor, and he shall assist the Mayor in carrying out his functions under this Act, and shall perform such other duties as may be assigned to him by the Mayor. The City Administrator shall be paid at a rate established by the Mayor, not

to exceed level IV of the Executive Schedule established under section 5315 of title 5 of the United States Code.

(8) The Mayor may propose to the executive or legislative branch of the United States Government legislation or other action dealing with any subject whether or not falling within the authority of the District government, as defined in this Act.

(9) The Mayor, as custodian thereof, shall use and authenticate the corporate seal of the District in accordance with law.

(10) The Mayor shall have the right, under rules to be adopted by the Council, to be heard by the Council or any of its committees.

(11) The Mayor is authorized to issue and enforce administrative orders, not inconsistent with this or any other Act of the Congress or any act of the Council, as are necessary to carry out his functions and duties.

(12) The Mayor may reorganize the offices, agencies, and other entities within the executive branch of the government of the District by submitting to the Council a detailed plan of such reorganization. Such a reorganization plan shall be valid only if the Council does not adopt, within sixty days (excluding Saturdays, Sundays, and holidays) after such reorganization plan is submitted to it by the Mayor, a resolution disapproving such reorganization. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 422, 87 Stat. 790.)

REFERENCES IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

"Reorganization Plan Numbered 3 of 1967", referred to in text, is set out in the Appendix to this title in the main edition.

"Section 713(d) of this Act", referred to in par. (2), is section 713(d) of Act Dec. 24, 1973, and is set out as a note under § 1-131.

CODIFICATION

In pars. (2) and (3), "January 2, 1975" has been substituted for "the effective date of section 711(a) of this Act" and "the effective date of this section" on authority of section 771(c), (d) of Act Dec. 24, 1973, which is set out as a note under § 1-121.

EFFECTIVE DATE

See note under § 1-161.

CROSS REFERENCES

Assistance of U.S. Civil Service Commission in development of District merit system, see § 1-322.

Certain delegated functions and functions of certain agencies, see § 1-132.

Duties of Mayor,

Annual Federal payment, see § 47-2501c.

Financial affairs of District, see § 47-226.

Personnel system for University of the District of Columbia, see § 31-1717.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-322, 5-103a.

§ 1-163. Municipal planning.

(a) The Mayor shall be the central planning agency for the District. He shall be responsible for the coordination of planning activities of the municipal government and the preparation and implementation of the District's elements of the comprehensive plan for the National Capital which may include

land use elements, urban renewal and redevelopment elements, a multi-year program of municipal public works for the District, and physical, social, economic, transportation, and population elements. The Mayor's planning responsibility shall not extend to Federal and international projects and developments in the District, as determined by the National Capital Planning Commission, or to the United States Capitol buildings and grounds as defined in sections 9-118 and 9-132, or to any extension thereof or addition thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibilities under this section, the Mayor shall establish procedures for citizen involvement in the planning process and for appropriate meaningful consultation with any State or local government or planning agency in the National Capital region affected by any aspect of a proposed District element of the comprehensive plan (including amendments thereto) affecting or relating to the District.

(b) The Mayor shall submit the District's elements and amendments thereto, to the Council for revision or modification, and adoption by act, following public hearings. Following adoption and prior to implementation, the Council shall submit such elements and amendments thereto, to the National Capital Planning Commission for review and comment with regard to the impact of such elements or amendments on the interests and functions of the Federal Establishment, as determined by the Commission.

(c) Such elements and amendments thereto shall be subject to and limited by determinations with respect to the interests and functions of the Federal Establishment as determined in the manner provided by Act of Congress. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 423, 87 Stat. 792.)

EFFECTIVE DATE

See note under § 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-223.

SUBCHAPTER V.—MISCELLANEOUS

§ 1-171. Advisory Neighborhood Commissions.

(a) The Council shall by act divide the District into neighborhood commission areas and, upon receiving a petition signed by at least 5 per centum of the registered qualified electors of a neighborhood commission area, shall establish for that neighborhood an elected advisory neighborhood commission. In designating such neighborhoods, the Council shall consider natural geographic boundaries, election districts, and divisions of the District made for the purpose of administration of services.

(b) Elections for members of each advisory neighborhood commission shall be nonpartisan, shall be scheduled to coincide with the elections of members of the Board of Education held in the District, and shall be administered by the Board of Elections and Ethics. Advisory neighborhood commission members shall be elected from single member districts within each neighborhood commission area by the registered qualified electors thereof.

(c) Each advisory neighborhood commission—

(1) may advise the District government on matters of public policy including decisions regarding planning, streets, recreation, social services programs, health, safety, and sanitation in that neighborhood commission area;

(2) may employ staff and expend, for public purposes within its neighborhood commission area, public funds and other funds donated to it; and

(3) shall have such other powers and duties as may be provided by act of the Council.

(d) In the manner provided by act of the Council, in addition to any other notice required by law, timely notice shall be given to each advisory neighborhood commission of requested or proposed zoning changes, variances, public improvements, licenses or permits of significance to neighborhood planning and development within its neighborhood commission area for its review, comment, and recommendation.

(e) In order to pay the expenses of the advisory neighborhood commissions, enable them to employ such staff as may be necessary, and to conduct programs for the welfare of the people in a neighborhood commission area, the District government shall apportion to each advisory neighborhood commission, out of the revenue of the District received from the tax on real property in the District including improvements thereon, a sum not less than that part of such revenue raised by levying 1 cent per \$100 of assessed valuation which bears the same ratio to the full sum raised thereby as the population of the neighborhood bears to the population of the District. The Council may authorize additional methods of financing advisory neighborhood commissions.

(f) The Council shall by act make provisions for the handling of funds and accounts by each advisory neighborhood commission and shall establish guidelines with respect to the employment of persons by each advisory neighborhood commission which shall include fixing the status of such employees with respect to the District government, but all such provisions and guidelines shall be uniform for all advisory neighborhood commissions and shall provide that decisions to employ and discharge employees shall be made by the advisory neighborhood commission. These provisions shall conform to the extent practicable to the regular budgetary, expenditure and auditing procedures and the personnel merit system of the District.

(g) The Council shall have authority in accordance with the provisions of this Act, to legislate with respect to the advisory neighborhood commissions established in this section.

(h) The foregoing provisions of this section shall take effect only if agreed to in accordance with the provisions of section 703(a) of this Act. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 738, 87 Stat. 824; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458; Oct. 30, 1975, D.C. Law 1-27, § 2, 22 DCR 2470.)

REFERENCES IN TEXT

"This Act", referred to in subsec. (g), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87

Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

"Section 703(a) of this Act", referred to in subsec. (h), is set out as a note under § 1-121. The advisory neighborhood commissions were agreed to by the voters in the charter referendum on May 7, 1974.

AMENDMENTS

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section catchline by substituting "Commissions" for "Councils" and section by substituting "neighborhood commission" and "neighborhood commissions" for "neighborhood council" and "neighborhood councils", respectively.

1974—Act Aug. 14, 1974, Pub. L. 93-376, amended subsec. (b) by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 5 of Act Oct. 30, 1975, D.C. Law 1-27, provided: "The provisions of this act [amending this section and §§ 1-1161, 1-1162, and 1-1182 and enacting material set out as a note under this section] shall be effective as provided by section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

SHORT TITLE

Section 1 of Act Oct. 30, 1975, D.C. Law 1-27, provided "That this act [amending this section and §§ 1-1161, 1-1162, and 1-1182 and enacting material set out as a note under this section] may be cited as the 'Advisory Neighborhood Commissions Act'."

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

REFERENCES IN OTHER LAWS TO ADVISORY NEIGHBORHOOD COUNCILS

Section 4 of Act Oct. 30, 1975, D.C. Law 1-27, provided: "Any reference in any law or relating solely to the District of Columbia, or in any rule, regulation, paper, report, or other document of the District of Columbia government (including any agency thereof) to the Advisory Neighborhood Councils shall be deemed to be, after the effective date of this act, a reference to the Advisory Neighborhood Commissions."

CROSS REFERENCES

Election campaigns, limitations of contributions and expenditures, see §§ 1-1161, 1-1162.

Lobbying exemption, see § 1-1180.

§ 1-171a. Advisory Neighborhood Commission areas.

There are hereby established in the District of Columbia Advisory Neighborhood Commission areas the boundaries of which shall be as depicted on the maps of the District of Columbia annexed to and made a part of this act. (Oct. 10, 1975, D.C. Law 1-21, § 3, 22 DCR 2066; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

REFERENCES IN TEXT

"Maps of the District of Columbia annexed to and made a part of this act", referred to in text, are set forth in 22 DCR 2074-2081.

"This act", referred to in text, is the Advisory Neighborhood Councils Act of 1975, Oct. 10, 1975, D.C. Law 1-21, 22 DCR 2065. For classification to the Code, see Short Title note set out under this section.

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Councils Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section by substituting "Commission" for "Council".

EFFECTIVE DATE

Section 12 of Act Oct. 10, 1975, D.C. Law 1-21, provided: "The provisions of this Act [enacting §§ 1-171a-1-171h and amending §§ 1-1161, 1-1162, and 1-1182] shall become effective as provided by Section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

SHORT TITLE

Section 1 of Act Oct. 10, 1975, D.C. Law 1-21, provided: "This act [enacting §§ 1-171a-1-171h and amending §§ 1-1161, 1-1162, and 1-1182] may be cited as the 'Advisory Neighborhood Councils Act of 1975.'"

PURPOSES

Section 2 of Act Oct. 10, 1975, D.C. Law 1-21, as amended Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472, provided: "Section 738 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-171a] provides that the Council shall, by act, divide the District of Columbia into Neighborhood Commission areas and establish, for each such area, an Advisory Neighborhood Commission. Such section 738 was to be effective only if a majority of the qualified electors voting in the charter referendum voted for the establishment of the Advisory Neighborhood Commissions.

"In the charter referendum a majority of the qualified electors did vote to establish such Commissions, and it is the purpose of this act to implement the provisions of section 738."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-171b.

§ 1-171b. Single-member districts—Adjustments.

(a) The Council shall, by resolution, establish single-member districts for each of the Neighborhood Commission areas established in section 1-171a. Such districts shall be established by July 31, 1975, and shall each have a population of approximately 2000 people, and shall be as nearly equal as possible. Upon adoption of the resolution establishing such districts, the Council shall cause a description of the boundaries of each such district to be published in the District of Columbia Register.

(b) The Mayor of the District of Columbia shall transmit a copy of the official report of the decennial census received by him from the United States Bureau of the Census to the Council within 10 days after receiving it. The Council, after public hearing, shall make such adjustments in the boundaries of the single-member districts established according to the procedure specified in subsection (a) as are necessary as a result of population shifts and changes. Such adjustments shall be made no later than 180 days preceding the next regularly scheduled election for members to the Advisory Neighborhood Commissions. (Oct. 10, 1975, D.C. Law 1-21, § 4, 22 DCR 2066; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Councils Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section by substituting in subsec. (a) "Neighborhood Commission" for "Neighborhood Council" and in subsec. (b)

"Advisory Neighborhood Commissions" for "Advisory Neighborhood Councils".

EFFECTIVE DATE

See note under § 1-171a.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

§ 1-171c. Establishment of Advisory Neighborhood Commissions.

(a) As soon as possible after October 10, 1975, but in no case later than 5 days after such date, the District of Columbia Board of Elections and Ethics (hereinafter in this act referred to as the "Board") shall—

(1) make available to any resident of an Advisory Neighborhood Commission area copies of petition forms for collecting signatures of registered qualified electors in such area; and

(2) publish in the District of Columbia Register and in at least two newspapers of general circulation in the District of Columbia, the number of registered qualified electors in each Advisory Neighborhood Commission area.

(b) Upon certification by the Board to the Chairman of the Council that five percent of the registered qualified electors of an Advisory Neighborhood Commission area have signed a petition calling for the establishment of an Advisory Neighborhood Commission in such area, the Council shall then establish by resolution a non-partisan elected Advisory Neighborhood Commission for such area, with its members to be elected from the single-member districts established for such area. Nothing in this section shall be construed to permit an individual to sign more than one petition for the establishment of an Advisory Neighborhood Commission. (Oct. 10, 1975, D.C. Law 1-21, § 5, 22 DCR 2067; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Councils Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

In subsec. (a), "October 10, 1975" and "such date" have been substituted for "the effective date of this act" and "such effective date", respectively.

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section by substituting "Advisory Neighborhood Commission" for "Advisory Neighborhood Council".

EFFECTIVE DATE

See note under § 1-171a.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

§ 1-171d. Members of Advisory Neighborhood Commissions—Qualifications—Nominations.

(a) (1) No person shall be a member of an Advisory Neighborhood Commission unless he (A) is a registered qualified elector actually residing in the single-member district from which he was elected; (B) has been residing in such district continuously for the 60 days immediately preceding the day on which he files the nominating petitions as a candidate as such a member; and (C) hold¹ no other elected public office.

¹ So in original. Probably should be "holds".

(2) For the purpose of this subsection, the term "elected public office" means the office of Mayor of the District of Columbia, Chairman or member of the Council of the District of Columbia, member of the District of Columbia Board of Education, and the Delegate to the House of Representatives.

(b) Candidates for member of an Advisory Neighborhood Commission shall be nominated by a petition—

(1) prepared and presented to the Board in accordance with regulations of the Board no later than the sixtieth calendar day before the date of the election in which he intends to be a candidate; and

(2) signed by not less than twenty-five registered qualified electors who are residents of the single-member district from which he seeks election.

Such petitions shall be made available by the Board no later than the seventy-fourth calendar day before an election for members of an Advisory Neighborhood Commission. (Oct. 10, 1975, D.C. Law 1-21, § 6, 22 DCR 2068; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Councils Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section by substituting "Advisory Neighborhood Commission" for "Advisory Neighborhood Council".

EFFECTIVE DATE

See note under § 1-171a.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

§ 1-171e. Elections for members of Advisory Neighborhood Commissions—Term of office—Vacancies—Change of residency by member.

(a) The first election for members of Advisory Neighborhood Commissions shall be held on February 3, 1976. The next such election shall be held on the date of the general election held during 1977 for members of the District of Columbia Board of Education. Thereafter such elections shall be held on the date of such general election in every odd numbered year.

(b) Each member of an Advisory Neighborhood Commission shall serve for a term of two years which shall begin at noon on the second day of January next following the date of election of such member, or at noon on the day after the date the Board certifies such election of such member, whichever is later, except that the terms of the members elected at the first election for members of an Advisory Neighborhood Commission held after October 10, 1975, shall begin at noon on the first day of March, 1976, or at noon on the day after the date the Board certifies the results of such election, whichever is later, and shall terminate at noon on the second day of January, 1978.

(c) No member may represent a single-member district for more than two consecutive terms, except

that that portion of a term served by a member as the result of a special election shall not be considered in computing consecutive terms.

(d) Any vacancy in office due to death, resignation or change of residence shall be filled by special election held by the Board within a reasonable period, but not to exceed 120 days from such vacancy, except that if the vacancy occurs less than six months prior to a regularly scheduled election of members of Advisory Neighborhood Commissions, the vacancy shall be filled at the regularly scheduled election.

(e) Any member of an Advisory Neighborhood Commission who ceases to reside in the single-member district from which he or she is elected shall be considered to have resigned, and the office shall be declared vacant. (Oct. 10, 1975, D.C. Law 1-21, § 8, 22 DCR 2070; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Councils Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

In subsec. (b), "October 10, 1975," has been substituted for "the effective date of this act".

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section by substituting "Commissions" and "Commission" for "Councils" and "Council", respectively.

EFFECTIVE DATE

See note under § 1-171a.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

§ 1-171f. Determination of winners in elections for members of Advisory Neighborhood Commissions.

The candidate in each single-member district receiving the highest number of votes cast in such election shall be declared the winner, except that in the case of a tie the procedures set forth in section 1-1110(c) shall govern. (Oct. 10, 1975, D.C. Law 1-21, § 9, 22 DCR 2071.)

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Councils Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

See note under § 1-171a.

§ 1-171g. Boundary changes for Advisory Neighborhood Commission areas and single-member districts.

(a) Petitions for changes in the boundaries of an Advisory Neighborhood Commission area or single-member district within any such area may be filed with the Council of the District of Columbia during the month of January of the year in which elections for Advisory Neighborhood Commissions are to be held. Such petitions must be signed by at least 5 percent of the registered qualified electors of such Advisory Neighborhood Commission area.

(b) Upon certification by the Board to the Chairman of the Council that 5 percent of the registered qualified electors of an Advisory Neighborhood Commission have signed such a petition, the Council

shall, after public hearing, accept or reject such petition.

(c) The Council shall accept or reject such a petition within three months after its receipt. (Oct. 10, 1975, D.C. Law 1-21, § 10, 22 DCR 2071; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Councils Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended section by substituting "Advisory Neighborhood Commission" and "Advisory Neighborhood Commissions" for "Advisory Neighborhood Council" and "Advisory Neighborhood Councils", respectively.

EFFECTIVE DATE

See note under § 1-171a.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

§ 1-171h. Administration—Challenges—Definition.

(a) The Board is authorized to conduct the elections provided for in this act and to adopt, amend, and enforce such regulations as are necessary to carry out the provisions of this act. The Board shall determine any challenges to the petitions, nominations, or elections provided under this act in the same manner as similar challenges are determined under chapter 11 of this title.

(b) For the purposes of this act, the term "registered qualified elector" means a qualified elector, as defined in section 1-1102, registered under section 1-1107. (Oct. 10, 1975, D.C. Law 1-21, § 11, 22 DCR 2072.)

REFERENCES IN TEXT

"This act", referred to in text, is the Advisory Neighborhood Councils Act of 1975, Oct. 10, 1975, D.C. Law 1-21, 22 DCR 2065. For classification to the Code, see Short Title note under § 1-171a.

CODIFICATION

Section was enacted as part of the Advisory Neighborhood Councils Act of 1975, and not as part of the District of Columbia Self-Government and Governmental Reorganization Act a portion of which comprises this chapter.

EFFECTIVE DATE

See note under § 1-171a.

Chapter 2.—MAYOR, COUNCIL, AND OTHER OFFICERS

Sec.

- 1-204c. Omitted.
- 1-213c. Surety bonds of officers and employees—Payment of premiums.
- 1-218. Omitted.
- 1-226a. Expenditures for emergencies.
- 1-262a. Official expenses.
- 1-263. Omitted.

§ 1-204c. Omitted.

Section, act Oct. 27, 1972, Pub. L. 92-579, § 3, 86 Stat. 1276, provided for the compensation of the Chairman of the District of Columbia Council, and is now covered by § 1-143.

§ 1-213. Bonds of officers and employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-213a. Commissioner authorized to obtain surety bonds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-213b. Commissioner's bond in lieu of employee bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-213c. Surety bonds of officers and employees—Payment of premiums.

Each officer and employee of the District required to do so by the Council shall provide a bond with such surety and in such amount as the Council may require. The premiums for all such bonds shall be paid out of appropriations for the District. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 737(c), 87 Stat. 824.)

CODIFICATION

Section is comprised of subsec. (c) of section 737 of Act Dec. 24, 1973. Subsections (a) and (b) of section 737 are classified to § 1-827.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

§ 1-214. Secretary of Board of Commissioners authorized to execute certain documents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-215. Volunteer services not to be accepted for government of District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Volunteer services to Board of Elections for purposes of voter education and registration, see § 1-1105.

Voluntary services to aid Director of Campaign Finance, see § 1-1152.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1105.

§ 1-216. Offices, abolition or consolidation—Reduction of employees—Appointments to and removal from office.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

LIMITATION ON EMPLOYMENT DURING FISCAL YEAR

Section 13 of the District of Columbia Appropriation Act, 1975 (Aug. 31, 1974, Pub. L. 93-405, 88 Stat. 828) provided:

"Appropriations in this Act shall not be available, during the fiscal year ending June 30, 1975, for the compensation of any person appointed—

"(1) as full-time employee to a permanent, authorized position in the government of the District of Columbia during any month when the number of such employees is greater than 39,619; or

"(2) as a temporary or part-time employee in the government of the District of Columbia during any month in which the number of such employees exceeds the number of such employees for the same month of the preceding fiscal year."

Similar provisions were contained in the following prior Acts:

1974—Aug. 14, 1973, Pub. L. 93-91, § 16, 87 Stat. 311.

1973—July 10, 1972, Pub. L. 92-344, § 17, 86 Stat. 456.

1972—Dec. 15, 1971, Pub. L. 92-196, § 707, 85 Stat. 658.

1970—Oct. 31, 1969, Pub. L. 91-106, § 802, 83 Stat. 181.

§ 1-218. Omitted.

Section, R. S., D. C. § 3; June 20, 1874, 18 Stat. 116, ch. 337, § 2; June 11, 1878, 20 Stat. 103 ch. 180, § 3; 1967 Reorg. Plan No. 3, § 401, eff. Nov. 3, 1967, 81 Stat. 951; provided that the executive power is vested in the Commissioner of the District of Columbia, and is now covered by § 1-162.

§ 1-219. Taxes not to be anticipated by sale or hypothecation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Borrowing in anticipation of revenues, see § 47-248.

§ 1-220. Pardons and respites—Power to grant—Commissioning of officers—Execution of laws.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-221. Location of hack stands.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-222. Establishment of hack stands adjoining railroad stations—Rates of charges.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-223. Rates for public vehicles to be fixed by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-224. Police regulations authorized in certain cases.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-224a. Additional penalties for violation of regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Imprisonment for nonpayment of fine

In view of rule that where defendant is indigent, jail sentence imposed as alternative to payment of fine should not exceed maximum prescribed for offense, indigent defendant who was convicted of tampering with an automobile would be remanded for resentencing, with alternative sentence in default of payment of \$100 fine not to exceed ten days. *G. A. Batres v. District of Columbia* (D.C. App. 1975, 347 A.2d 585).

§ 1-224b. Regulations for the keeping and running at large of dogs.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-225. Publication of regulations—Effective date.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 1-226. Regulations for protection of life, health, and property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Civil rights

Portion of order of the Commission on Human Rights which awarded to black complainant, who had been denied an apartment because of her race, damages in the amount of \$950 as compensation for humiliation and mental anguish and for out-of-pocket expenses was unauthorized by regulation authorizing the Commission "to take such affirmative action as will effectuate the purposes of this Article," despite contention that the monetary award was mere incidental relief. *Mendota Apartments et al. v. District of Columbia Commission on Human Rights* (D.C. App. 1974, 315 A.2d 832).

Insurance

Fact that no previous cases upheld the municipality's exercise of police power to regulate insurance did not compel conclusion that the District Council was without such power. *Firemen's Insurance Company of Washington, D.C. v. W. E. Washington et al.* (1973, 483 F. 2d 1323, 157 U.S. App. D.C. 320).

Regulation prohibiting auto, fire or casualty insurer from considering geographical location in determining whether to insure or continue to insure a risk in the District of Columbia except in cases of overconcentration of liability in a single high risk area and regulation prohibiting cancellation of auto, fire and casualty policies only for specified reasons are within the police power accorded to the District of Columbia by congressional enactment. *Id.*

District of Columbia regulation generally precluding the insurance company from considering geographic location in determining whether to insure or continue to insure auto, fire and casualty risks in district and prohibiting cancellation of those policies for other than specified conditions do not conflict with specific provisions of the District of Columbia Insurance Code or the Automobile Insurance Plan and were not preempted thereby; with respect to basic property insurance regulation prohibiting geographic discrimination did conflict with and was preempted by the District of Columbia Insurance Placement Act. *Id.*

Nature of power

Congress in legislating for District of Columbia has all the powers of a state legislature and may delegate to district government that full legislative power subject to constitutional limitations to which all lawmaking is subservient and subject to the power of Congress at any time to revise, alter, or revoke authority granted. *Firemen's Insurance Company of Washington, D.C. v. W. E. Washington et al.* (1973, 483 F. 2d 1323, 157 U.S. App. D.C. 320).

District of Columbia City Council, while possessing no inherent legislative authority, does have broad delegation of police power from Congress. *Id.*

Tampering with automobiles

Police regulation making it a violation to tamper with an automobile is clearly authorized under this section which empowers the District of Columbia to make and enforce police regulations for protection of all property within the District of Columbia. *G. A. Batres v. District of Columbia* (D.C. App. 1975, 347 A.2d 585).

§ 1-226a. Expenditures for emergencies.

When required by the public exigencies to meet conditions caused by emergencies such as riot, pestilence, public insanitary conditions, flood, fire, storm, and similar disasters, the Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized to expend such amounts as may be necessary without regard to advertising provisions of section 1-808. (Oct. 26, 1973, Pub. L. 93-140, § 1, 87 Stat. 504.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

Section 28 of act Oct. 26, 1973, Pub. L. 93-140, 87 Stat. 509, provided: "Appropriations to carry out the purposes of this Act and the amendments made by this Act [adding §§ 1-226a, 1-262a, 1-809a, 3-213a, 4-188, 4-189, 4-415, 7-135b, 7-135c, 7-807, 9-221, 24-426, 24-427, 31-1119, 31-1120, 31-1121, 31-1122, 31-1542a, 32-331, 32-332, 32-333, 32-334, 36-503, 40-501a, 43-1543, 47-2331 note; and amending §§ 6-1203(h), 7-601, 47-1001, 47-1008] are hereby authorized."

§ 1-227. Regulations relative to firearms, explosives, and weapons.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Application for license

Applications for licenses to carry concealed weapons should be treated under proper regulatory criteria duly adopted. *A. F. Jordan, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 315 A. 2d 153).

Publication of regulations

Whatever rule is used in District of Columbia to determine eligibility for a license to carry a handgun, it must be adopted, published, and applied according to law, and remain consistent with congressional policy. *A. F. Jordan, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 315 A. 2d 153).

§ 1-228. Building regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Applicability

Where District of Columbia Redevelopment Land Agency maintained properties acquired by it as residences only temporarily until relocation housing for residents becomes available and redevelopment or rehabilitation could be undertaken, the District of Columbia Housing Code was not directly applicable to the agency's temporary residential properties. *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

§ 1-229. Regulations for construction and operation of elevators—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-230. Regulations for control of rabies—Vaccination of dogs—Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-231. Outdoor signs—Council may make regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-232. License requirements—Outdoor signs—Fee.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-233. Penalties—Publication of regulations.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 1-234. Lights—Maintenance outside city limits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-235. Cleaning streets, alleys, and avenues, and repairs of sewers made municipal objects.

CROSS REFERENCES

Snow and ice removal,

Appropriations, see § 7-807.

Sidewalks, see §§ 7-801 to 7-806.

§ 1-236. Sale of street sweepings authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-237. Investigations of municipal matters by Commissioner and Council—Authority to administer oaths.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Investigative authority of Council of the District of Columbia, see § 1-148.

§ 1-238. Annual report to Congress.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-239. Illustrations in reports prohibited, unless authorized by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-240. Originals of discontinued reports of government of District of Columbia to be preserved for public inspection.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-243b. Leasing authority—Limitations—Maximum rental.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-244. Additional powers of Commissioner and Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-245. Appointment of contracting officers—Powers—Approval of contracts over \$3,000—Void contracts—Liquidated damage contracts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-246. Powers and duties of Director of Inspection—Delegation of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-248. Effectuate settlement for real estate acquired by purchase or condemnation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-249. Power conferred by sections 1-244 to 1-246 and 1-248 as additional.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-250. Purchase of vehicles—Trade-in as part payment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-251. Authority to grant additional compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-252. Authority to fix certain licensing and registration fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Boxing and Wrestling Commission authorized to fix fees for permits and licenses, subject to approval of Mayor, see § 2-1236.

§ 1-253. Same—Increase or decrease of fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-254. Commissioner's authority to determine honorariums for members of boards—Deposit of fees in the Treasury—Receipt of honorarium without prejudice to other compensation—Definition—Operation of civil service retirement laws.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-257. Council authorized to change and fix licensing periods.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-258. Applicability of sections 1-254 to 1-258 to boards covered by Reorganization Plan No. 5 of 1952.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-260. Holidays for District employees—Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-261. Authority for transporting children of certain employees in District-owned vehicles.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-262. Reception of eminent persons—Appropriation authorized.

There is hereby authorized to be appropriated, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, not to exceed \$10,000 in any fiscal year for such expenses as the Council of the District of Columbia shall deem to be necessary, including personal services, and without reference to section 1-808; or the civil-service laws, for the reception and entertainment of officials of foreign, State, local, or Federal Governments and other dignitaries and eminent persons visiting in or returning to the District of Columbia; and the certificate of the Council shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (July 11, 1947, 61 Stat. 314, ch. 231, § 1.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCES IN TEXT

The "civil service laws", referred to in this section, are set forth in title 5, U.S.C. See, particularly, § 3301 et seq. of that title.

CODIFICATION

The exception from "the Classification Act of 1923, as amended" has been omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949 (63 Stat. 972, 973) repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While § 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the

1949 Act, it did not have the effect of continuing the exception contained in this section because of § 1106(b) that provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by § 1106(a). The Classification Act of 1949 was repealed by Act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632 (of which § 1 revised and enacted title 5, U.S.C., into law). Section 5102 of title 5, U.S.C., now contains the applicability provisions of the 1949 Act.

§ 1-262a. Official expenses.

The Mayor of the District of Columbia and the Chairman of the Council of the District of Columbia are hereby authorized to provide for the expenditure, within the limits of specified annual appropriations, of funds for appropriate purposes related to their official capacity as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (Oct. 26, 1973, Pub. L. 93-140, § 26, 87 Stat. 509.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

The portion of the source statute (sec. 26 of act Oct. 26, 1973) that relates to the Superintendent of Schools, the President of the Federal City College, the President of the Washington Technical Institute, and the President of the District of Columbia Teachers College is classified to § 31-1122.

APPROPRIATIONS

See note under § 1-226a.

CROSS REFERENCE

School ceremonial expenses, see § 31-1121.

§ 1-263. Omitted.

This section is omitted as it was not continued by the District of Columbia Appropriation Act, 1975. Previously it was continued for the fiscal years, and by the statutes, listed below. For further details for prior years, see the Codification note under this section in the main edition of the Code.

1974—Aug. 14, 1973, Pub. L. 93-91, § 10, 87 Stat. 310.

1973—July 10, 1972, Pub. L. 93-344, § 11, 86 Stat. 455.

§ 1-264. Imposition of penalties for delivery of bad checks in payment of obligations due District of Columbia—Basis for penalty—Exception—Manner of collection.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-265. District of Columbia student loan insurance program.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-266. District of Columbia medical assistance program—Standards and criteria for determining eligibility—Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Limited podiatric services

Limiting podiatric services that podiatrists may provide under District of Columbia Medicaid plan while permitting physicians to furnish a full range of podiatric care does not violate Medicaid provisions of the Social Security Act or implementing regulations. *District of Columbia Podiatry Society et al. v. District of Columbia et al.* (1975, 407 F. Supp. 1259).

§ 1-267. Supplementary medical insurance program.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2A.—DELEGATE TO THE HOUSE OF REPRESENTATIVES

§ 1-292. Applicability of other laws.

REFERENCES IN TEXT

Section 81 of title 2, United States Code, referred to in par. (23), was repealed by sec. 505(2) of Act July 12, 1974, Pub. L. 93-344, 88 Stat. 322.

Section 82 of title 2, United States Code, referred to in par. (24), was repealed by sec. 220(d), (e) of Act June 6, 1972, Pub. L. 92-310, 86 Stat. 204.

CODIFICATION

Section is also set out as a note under 2 U.S.C. 25.

Chapter 3.—OFFICERS AND EMPLOYEES GENERALLY

Sec.

1-322. Assistance of Civil Service Commission in development of District merit system.

§ 1-301. Corporation counsel—Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-302. Assistant corporation counsels—Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-304. Purchasing officer—Duties—Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-306. Municipal architect—Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-309. Reports by custodians of property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-310a. Salary increases by reason of reallocation of positions—Limitation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-313. Per diem employees—Leave of absence.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-315. Payrolls—Signature by mark.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-316. Persons convicted of certain crimes ineligible to hold office.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Forfeiture of office or position of officer or employee of District convicted of having personal financial interest in contract or transaction, see § 1-828.

§ 1-320. Eligibility for employment in the District of Columbia Government.

NOTES TO DECISIONS

Class actions

Regardless of whether plaintiff could have qualified to maintain as a class action his complaint of racial discrimination against District of Columbia employees had it been filed in district court ab initio, class action was proper where administrative proceedings had been maintained on class basis, administrative findings and proposed remedies had dealt with all aspects of the com-

plaint, and mayor's action complained of was predicated on grounds generally applicable to the class. *J. T. Watkins et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 941; aff'd 505 F.2d 477, 164 U.S. App. D.C. 370).

Injunctions

Refusal to issue an injunction against racial discrimination within Housing Division of Department of Licenses and Inspections and to retain jurisdiction until all steps had been taken to eliminate effects of past discrimination and to insure nondiscrimination in future was manifestly unjust, notwithstanding that a new director had taken steps to insure equal employment opportunity, where period of nondiscrimination was very brief compared to long record of discrimination demonstrated in case and task of eliminating ingrained discriminatory practices was a difficult one deserving of active judicial support. *J. T. Watkins et al. v. W. E. Washington, Commissioner, et al.* (1972, 472 F.2d 1373, 153 U.S. App. D.C. 298).

Racial discrimination

Positive relationship between test of verbal skill administered applicants for employment as police officers to training course performance is sufficient to validate the test, wholly aside from its possible relationship to actual performance as a police officer. *W. E. Washington, etc., et al. v. A. E. Davis et al.* (1976, 96 S. Ct. 2040, 426 U.S. —; rev'g 512 F.2d 956, 168 U.S. App. D.C. 42).

The disproportionate impact on Negroes of written test of verbal skill administered to applicants for employment as police officers does not warrant the conclusion that the test, which is neutral on its face, is a purposely discriminatory device. *Id.*

The affirmative efforts of Police Department to recruit black officers, the changing racial composition of the recruit classes and of the force in general, and the relationship of written test of verbal skill to the training program negates any inference that the Department discriminated on the basis of race notwithstanding the disproportionate impact of the test on Negro applicants. *Id.*

Where District of Columbia employee who was victim of racial discrimination in employment and personnel policies had been promoted to first vacant GS-12 position as recommended by hearing committee appointed by district court, and had received all back pay for time during which he was discriminated against, he had received all relief to which he was entitled under original action, and he was not entitled to determination that promotion should be retroactive to time he filed his original action and award of back pay from that date. *J. T. Watkins et al. v. W. E. Washington, Mayor, et al.* (1975, 511 F.2d 404, 167 U.S. App. D.C. 166; cert. denied 96 S. Ct. 61, 423 U.S. 835).

Upon findings of hearing committee and equal employment opportunity officer of racial discrimination in the District of Columbia department of licenses and inspections, mayor had discretion in framing an appropriate remedy, but where a definite and persistent pattern of unconstitutional racial discrimination was demonstrated, it was not sufficient to express the hope that discrimination would disappear and to exhort those involved to a better performance; mayor was obliged to take affirmative steps to reinforce his expectations. *J. T. Watkins et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 941; aff'd 505 F.2d 477, 164 U.S. App. D.C. 370).

Where there had been racial discrimination against Negro employees of the District of Columbia department of licenses and inspections, district court would not disturb mayor's determination that no disciplinary action would be taken nor direct promotion of particular individuals to specific jobs, but would direct, inter alia, payment of back pay, would enjoin further discrimination, and would order the establishment of certain procedures with respect to hiring and promotion. *Id.*

Sovereign immunity

Action against the mayor of the District of Columbia and others seeking relief with respect to racial discrimination against Negro employees in the department of licenses and inspections was not barred by doctrine of sovereign immunity; the courts have power under the Constitution to remedy racial discrimination by a public agency in any form. *J. T. Watkins et al. v. W. E. Washington et al.* (1973,

366 F. Supp. 941; aff'd 505 F.2d 477, 164 U.S. App. D.C. 370).

§ 1-322. Assistance of Civil Service Commission in development of District merit system.

The United States Civil Service Commission is hereby authorized to advise and assist the Mayor and the Council in the further development of the merit system or systems required by section 1-162(3) and the said Commission is authorized to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions as needed. The costs of any specific services furnished by the Civil Service Commission may be compensated for under the provisions of section 1-826. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 734, 87 Stat. 823.)

CODIFICATION

Section is also set out as a note under 5 U.S.C. 3320.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

Chapter 5.—NOTARIES PUBLIC

§ 1-501. Appointment—Representation of clients before government departments—Administration of certain acknowledgments—License fee—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-504. Oath and bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-506. Signature and impression of seal deposited.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-516. Vacation of office—Custody of records and papers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-517. Certificates issued by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-518. Appropriation—Inclusion of expenses and salaries in Commissioner's annual estimates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—SURVEYOR

§ 1-601. Appointment and term of office—Salary.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-602. Oath.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-603. Assistant surveyor and other employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-605. Surveyor's office to be legal office of record of plats and subdivisions.

NOTES TO DECISIONS

Purpose of filing plat

Principal purpose of filing plat in office of surveyor is to establish areas and boundaries of lots in the subdivision. *H. Case v. A. E. Morrisette* (1973, 475 F.2d 1300, 155 U.S. App. D.C. 31).

Servitudes

Although subdivision plats must be duly recorded in office of surveyor, once that requirement has been met, District of Columbia statutes do not prohibit an owner from incorporating a revised copy of the same plat in another recordable instrument in order to impress, through a suitable endorsement on the plat, a servitude upon a single lot in the original subdivision and, in such circumstances, the revised plat is being used only as method of imposing a servitude, and not to establish the areas and boundaries of lots in the subdivision. *H. Case v. A. E. Morrisette* (1973, 475 F.2d 1300, 155 U.S. App. D.C. 31).

Equitable servitudes can be created by inscriptions on subdivision plats filed with surveyor, but they also may be created by deeds, with or without plats attached. *Id.*

Where deed described parcel as lot on subdivision plat recorded in office of surveyor and referred to it as area for parking as shown on revised plat recorded with declara-

tion of covenants, purchaser was placed on notice of inscription affecting lot and either such constructive notice or purchaser's actual knowledge was sufficient to require enforcement of equitable servitude against purchaser and it was immaterial that copy of revised plat bearing inscription was recorded in office of recorder of deeds rather than with surveyor. *Id.*

§ 1-606. Records, papers, and instruments to be kept and preserved by surveyor.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-613. Plats—Regulation—Recording.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-615. Cemeteries—Right of way through.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-616. Surveys for District—Fees and documents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-621. Lots and parcels may be resurveyed to determine accuracy—Recording only on order.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-622. Reference to subdivisions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-623. Alleys—Police regulation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-629. District of Columbia Council to prescribe fees for surveyor—Schedule of fees to be displayed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—INSPECTION—REGULATORY PROVISIONS

§ 1-703. Boiler inspection service created—Personnel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-704. Bond—Oath.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-705. Inspection of designated steam boilers and unfired pressure vessels.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-706. Operating at pressure greater than permitted.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-707. Annual inspection—Certificate of inspection—Display.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-710. Fees—Certificate invalidated by cessation of insurance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-712. Records to be kept.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-715. Regulations—Fees.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-718. Effective date of sections 1-701 to 1-718—Promulgation of regulations and schedule of fees.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 1-719. Electric wiring—Inspection—Rules and regulations—Fees.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, § 1-131, and replaced by the Council of the District of Columbia, and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Regulations, reasonableness**

Exclusion of persons in situation of petitioner, who owned and occupied residential premise in which basement apartment was occupied by unrelated tenants, and who sought permit allowing him personally to rewire his living quarters, from District of Columbia electrical code exemption of owner-occupants of single-family dwellings from requirement of involvement of appropriately licensed electrician in rewiring project is neither irrational nor invidiously discriminatory, and thus application of regulations requiring involvement of electrician to petitioner is reasonable. *R. R. Snider v. District of Columbia Board of Appeals and Review* (D.C. App. 1975, 342 A.2d 50).

§ 1-720. Inspection—Notice of violations—Penalty.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-721. Electrical engineer—Appointment—Qualifications—Assistant inspectors.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-723. Connecting current before inspection—Penalty—Authority to remove connection.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-724. Plumbing—Appointment of inspector—Duties.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-725. Regulations governing plumbing, house drainage, sewers, and for examination and licensing of plumbers and gas-fitters—Noncompliance—Penalty.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-726. Fees for permits for sewer, gas, and water connections, excavations—Disposition of fees.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-727. Inspector of plumbing—Inspection of buildings—Enforcement of regulations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-728. Principal assistant inspector of buildings may discharge duties of inspector.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—CONTRACTS**Sec.**

1-805. Contractors' bond not required for contracts not exceeding \$10,000—Contracts not to be subdivided to reduce amount.

1-809a. Advertising and publication of notices—Availability of appropriations.

Sec.

- 1-825. Contracts extending beyond one year.
 1-826. Agreements between United States and District of Columbia for reimbursable services—Delegation of functions—Costs and payments—Exception.
 1-827. Same; Adjustment and payment of debts—Reimbursement of costs of demonstrations.
 1-828. Personal financial interest in contract or transaction—Forfeiture of office or position on conviction.

§ 1-801. Limitation on right of Commissioner to contract.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-802. Contracts in which Commissioner personally interested to be void.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-803. Commissioner's contracts to be in writing and filed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

ABOLITION OF OFFICE

The office of secretary of the District was established by section 4 of Act Feb. 21, 1871, ch. 62, 16 Stat. 420. The first section of Act June 20, 1874, ch. 337, 18 Stat. 116, provided in part that all provisions of law providing for a secretary for the District are hereby repealed. See also section 1-214 and notes thereunder.

NOTES TO DECISIONS

Filing

Where landscape architect and city planner who performed services for municipality pursuant to oral contract with acting director of agency submitted itemized statement which was initialed by acting director and which complied with requirement of writing, failure to file same as required by law did not rest with landscape architect and city planner. *L. E. Coffin, Jr. v. District of Columbia* (D.C. App. 1974, 320 A.2d 301).

Oral contract

Where applicable regulations prohibited municipal contracting officers from entering into contracts for personal services in excess of \$2,500 and required such contracts to be in writing and entered into by municipal procurement officer, landscape architect and city planner who provided services for municipality pursuant to oral agreement with acting director of agency and whose itemized statement for services in the amount of \$3,270 had been initialed by acting director and submitted for processing and payment could not recover full amount of bill but was entitled to recover sum of \$2,500. *L. E. Coffin, Jr. v. District of Columbia* (D.C. App. 1974, 320 A.2d 301).

Itemized statement for services performed for municipality by landscape architect and city planner pursuant to oral contract with acting director of agency satisfied statute of frauds. *Id.*

§ 1-804a. Public contractors required to post performance and payment bonds in certain cases—Amount of bonds.

(a) Before any contract, exceeding \$10,000 in amount, for the construction, alteration, or repair of any public building or public work of the District of Columbia is awarded to any person, such person shall furnish to the District of Columbia the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

* * * * *

(As amended Aug. 14, 1973, Pub. L. 93-89, title V, § 501, 87 Stat. 305.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Section 501 of Act Aug. 14, 1973, Pub. L. 93-89, amended the first sentence by striking out "\$2,000" and inserting in lieu thereof "\$10,000".

§ 1-804b. Rights of laborers and materialmen to sue on payment bonds—Prior notice of claim required in certain cases—Time limitations—Suit to be brought in name of District of Columbia.

NOTES TO DECISIONS

Jurisdiction of District Court

Requirement of this section that every materialman suit should be brought in Superior Court does not deprive District Court of diversity jurisdiction in such suits nor render such cases nonremovable once they were brought in Superior Court. *District of Columbia v. Ranger Construction Company at ano.* (1974, 394 F. Supp. 801).

§ 1-804c. Certified copy of bond and contract to be furnished on application of interested parties—Copy as prima facie evidence—Fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-805. Contractors' bond not required for contracts not exceeding \$10,000—Contracts not to be subdivided to reduce amount.

In all cases where the Mayor of the District of Columbia contracts for work or material involving a sum not exceeding \$10,000 it shall not be necessary for said Mayor to require a bond with said contract; but no work capable of execution under a single contract, nor any purchase of material where the total expenditure involved is greater than \$10,000, shall be subdivided or lessened for the purpose of reducing the sum of money to be paid therefor to less than that amount. (June 28, 1906, 34 Stat. 546, ch. 3575; June 26, 1912, 37 Stat. 168, ch. 182; Aug. 3, 1968, Pub. L. 90-455, § 4, 82 Stat. 629; Aug. 14, 1973, Pub. L. 93-89, title V, § 501, 87 Stat. 305.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the Dis-

trict of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Section 501 of Act Aug. 14, 1973, Pub. L. 93-89, amended section by striking out "\$2,000" and inserting in lieu thereof "\$10,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7-603.

§ 1-807. Retents.

On all contracts made by the District of Columbia for construction work there shall be withheld, until completion and acceptance of the work, a retent of 10 per centum of the total amount of any payments made thereunder as a guaranty fund that the terms of such contracts shall be strictly and faithfully performed: *Provided, however,* That whenever 50 per centum of the work required under a contract for construction work has been completed and payments therefor have been made the Mayor of the District of Columbia, in his sole discretion, may authorize subsequent payments to be made to the contractor without withholding from such subsequent payments 10 per centum thereof as required by this section, or the said Mayor may authorize retention from such subsequent payments of less than 10 per centum thereof, and whenever the work is substantially complete, the Mayor, if he considers the amount retained to be in excess of the amount adequate for the protection of the District of Columbia, at his discretion may release to the contractor all or a portion of such excess amount; and the said Mayor in his sole discretion, may further authorize payment in full, including retained percentages, for each separate building or public work on which the price is stated separately in the contract upon completion and acceptance of such building or work. (Mar. 3, 1887, 24 Stat. 501, ch. 355; Mar. 31, 1906, 34 Stat. 94, ch. 1356, § 1; Aug. 3, 1949, 63 Stat. 493, ch. 386; Aug. 3, 1968, Pub. L. 90-455, § 5, 82 Stat. 629.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Provisions of Act Mar. 3, 1887, cited as a credit for this section, which authorized the Treasurer of the United States to retain or invest money retained from District contracts, have been omitted in view of the amendatory 1949 Act which eliminated the requirement that retents for one year or more be deposited with the Treasurer of the United States.

AMENDMENTS

1968—Section 5 of act Aug. 3, 1968, Pub. L. 90-455, amended section by inserting the following before the semicolon, " , and whenever the work is substantially complete, the Commissioners, if they consider the amount retained to be in excess of the amount adequate for the protection of the District of Columbia, at their discretion may release to the contractor all or a portion of such excess amount".

1949—Act Aug. 3, 1949, amended section generally. Prior to amendment, the section read: "On all contracts made by the District of Columbia for construction work there shall be held a retent of ten per centum of the cost of such construction work as a guaranty fund to keep the work done under such contracts in repair, and that the terms of such contracts shall be strictly and faithfully per-

formed. On contracts for the construction of asphalt, tar, brick, cement, or stone pavements the retent shall be held for a term of five years from the date of completion of the contract. On contracts for the construction of bridges and sewers the retent shall be held for a term of one year from the date of completion of the contract. On contracts for the construction of buildings, and other contracts for construction work, the retent shall be held until the completion of the work. All retents for one year or more shall be deposited with the Treasurer of the United States as now required by law."

CROSS REFERENCE

Cash retents not required to guarantee street repairs, see § 7-603.

§ 1-808. Advertisement for proposals for purchases and contracts for supplies or services; application to sales and contracts to sell.

Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed \$10,000, (2) when the public exigencies require the immediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis. Except (1) as authorized by section 1638 of Appendix to Title 50, U.S. Code, (2) when otherwise authorized by law, or (3) when the reasonable value involved in any one case does not exceed \$500, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising. (R.S. § 3709; Aug. 2, 1946, ch. 744, § 9(a), 60 Stat. 809; June 30, 1949, ch. 288, title VI, § 602(f), formerly title V, § 502(e), 63 Stat. 403, renumbered Sept. 5, 1950, ch. 849, §§ 6 (a), (b), 8(c), 64 Stat. 583; Aug. 28, 1958, Pub. L. 85-800, § 7, 72 Stat. 967; July 25, 1974, Pub. L. 93-356, § 1, 88 Stat. 390.)

REFERENCES IN TEXT

Section 1638 of Appendix to Title 50, U.S. Code, referred to in the text, was repealed by act June 30, 1949, ch. 288, title VI, § 602(a) (1), 63 Stat. 399, eff. July 1, 1949, renumbered by act Sept. 5, 1950, ch. 849, § 6 (a), (b), 64 Stat. 583, and is now covered by section 484 of Title 40, U.S. Code, Public Buildings, Property, and Works.

AMENDMENT

1974—Act July 25, 1974, Pub. L. 93-356, substituted "\$10,000" for "\$2,500" in the first sentence.

REPEAL OF EXEMPTIONS

Section 9(b) of act Aug. 2, 1946, provided: "Exemptions from section 3709, Revised Statutes [this section], in other law in amounts of \$100 or less are hereby repealed."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-226a, 1-262, 1-1002, 4-186, 5-713, 9-209.

§ 1-809a. Advertising and publication of notices—Availability of appropriations.

Appropriations authorized by this Act or any Act of Congress shall be available to the Mayor for general advertising authorized by law, and for the publication of notices of public hearings, orders, regulations, amendments of orders and regulations,

tax and school notices, and similar matters of public interest, in the District of Columbia Register, and, except as otherwise provided by law, in such newspapers, legal periodicals, trade journals, and other printed media at such times and in such places as may be approved by the said Mayor. (Oct. 26, 1973, Pub. L. 93-140, § 25(d), 87 Stat. 509.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

"This Act", referred to in text, is the Act of Oct. 26, 1973, Pub. L. 93-140, 87 Stat. 504. See Tables for classification of the act to the code.

APPROPRIATIONS

See note under § 1-226a.

§ 1-810. Separate contracts for material and for labor authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-811. Operation of District quarry.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-812. Use of agents in purchasing sites for schools and public buildings—Commissions—Future enlargement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-813. Building materials may be tested by Bureau of Standards.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-814. Testing materials in laboratory of highway department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-817. Sewerage agreement with Maryland authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-817a. Contracts for removal of certain byproducts of the District of Columbia sewage-treatment plant.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-817c. Sewerage agreement with Virginia authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-818. Sale of property unfit for service—Proceeds credited to appropriation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-819. Exchange of equipment on purchase of new.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-820. Reciprocal agreements for police mutual aid with authorities in Maryland and Virginia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-823. Same; Commissioner to direct out of District police and other personnel—Enforcement of District laws by out of District police and personnel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-824. Contracts for inspection, maintenance and repair of fixed equipment.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-825. Contracts extending beyond one year.

No contract involving expenditures out of an appropriation which is available for more than one year shall be made for a period of more than five years unless, with respect to a particular contract, the Council, by a two-thirds vote of its members present and voting, authorizes the extension of such period for such contract. Such contracts shall be made pursuant to criteria established by act of the Council. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 451, 87 Stat. 803.)

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 1-826. Agreements between United States and District of Columbia for reimbursable services—Delegation of functions—Costs and payments—Exception.

(a) For the purpose of preventing duplication of effort or for the purpose of otherwise promoting efficiency and economy, any Federal officer or agency may furnish services to the District government and any District officer or agency may furnish services to the Federal Government. Except where the terms and conditions governing the furnishing of such services are prescribed by other provisions of law, such services shall be furnished pursuant to an agreement (1) negotiated by the Federal and District authorities concerned, and (2) approved by the Director of the Federal Office of Management and Budget and by the Mayor. Each such agreement shall provide that the cost of furnishing such services shall be borne in the manner provided in subsection (c) by the government to which such services are furnished at rates or charges based on the actual cost of furnishing such services.

(b) For the purpose of carrying out any agreement negotiated and approved pursuant to subsection (a), any District officer or agency may in the agreement delegate any of his or its functions to any Federal officer or agency, and any Federal officer or agency may in the agreement delegate any of his or its functions to any District officer or agency. Any function so delegated may be exercised in accordance with the terms of the delegation.

(c) The cost to each Federal officer and agency in furnishing services to the District pursuant to any such agreement are authorized to be paid, in accordance with the terms of the agreement, out of ap-

propriations available to the District officers and agencies to which such services are furnished. The costs to each District officer and agency in furnishing services to the Federal Government pursuant to any such agreement are authorized to be paid, in accordance with the terms of the agreement, out of appropriations made by the Congress or other funds available to the Federal officers and agencies to which such services are furnished, except that the Chief of the Metropolitan Police shall on a nonreimbursable basis when requested by the Director of the United States Secret Service assist the Secret Service and the Executive Protection Service in the performance of their respective protective duties under section 3056 of title 18 of the United States Code and section 302 of title 3 of the United States Code. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 731, 87 Stat. 822.)

CODIFICATION

Section is also classified to 31 U.S.C. 685a.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCES

Board of Education authorized to enter into contracts with governments of United States and District of Columbia and other public and private agencies to render and receive services, see § 31-1735.

Federal control of Metropolitan Police in emergencies, see § 4-101a.

Services furnished by Civil Service Commission authorized to be compensated for under this section, see § 1-322.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-162, 1-322, 1-827, 9-146.

§ 1-827. Same; Adjustment and payment of debts—Reimbursement of costs of demonstrations.

(a) Subject to section 1-826, the Mayor, with the approval of the Council, and the Director of the Office of Management and Budget, is authorized and empowered to enter into an agreement or agreements concerning the manner and method by which amounts owed by the District to the United States, or by the United States to the District, shall be ascertained and paid.

(b) The United States shall reimburse the District for necessary expenses incurred by the District in connection with assemblages, marches, and other demonstrations in the District which relate primarily to the Federal Government. The manner and method of ascertaining and paying the amounts needed to so reimburse the District shall be determined by agreement entered into in accordance with subsection (a) of this section. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 737 (a), (b), 87 Stat. 824.)

CODIFICATION

Section comprises subsecs. (a) and (b) of section 737 of Act Dec. 24, 1973. Subsection (c) of section 737 is classified to § 1-213c.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 1-828. Personal financial interest in contract or transaction—Forfeiture of office or position on conviction.

Any officer or employee of the District who is convicted of a violation of section 208 of title 18, United States Code, shall forfeit his office or position. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 732, 87 Stat. 822.)

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCE

Persons convicted of certain crimes ineligible to hold office, see § 1-316.

Chapter 9.—CLAIMS AGAINST DISTRICT

Sec.

1-907. Settlement of claims of District employees for damages to or loss of personal property incident to service.

§ 1-901. Service of process.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-902. Settlement of claims and suits against the District of Columbia—Cases that may be settled—Defenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Abuse of discretion

Where plaintiff complained against District of Columbia for false arrest, false imprisonment, unlawful search and assault, District's pretrial statement demonstrated that it would not be surprised by testimony on causes other than false arrest and there was no indication that plaintiff had intended to abandon other causes, trial court abused its discretion in refusing to permit plaintiff to amend pretrial order to include other claims on basis that only issue of false arrest had been spelled out in pretrial order. *C. L. Clarke v. District of Columbia* (D.C. App. 1973, 311 A. 2d 508).

Civil Rights Act

In light of unique status of District of Columbia and absent any indication in either language, purposes or history of civil rights statute dealing only with those deprivations of rights which are accomplished under the color of the law of "any State or Territory" of a legislative intent to include the District within scope of its coverage, District of Columbia does not constitute a "State or Territory" within meaning of the statute; disapproving *Sewell v. Pegelow*, 291 F.2d 196 (CA4 1961). *District of Columbia v. M. Carter* (1973, 93 S. Ct. 602, 409 U.S. 418; rev'g 447 F. 2d 358, 144 U.S. App. D.C. 388).

False arrest

Allegation that plaintiff was arrested and imprisoned without process raised the presumption of unlawful restraint and shifts to defendant burden of justifying the restraint as lawful. *C. L. Clarke v. District of Columbia* (D.C. App. 1973, 311 A. 2d 508).

Absence of probable cause for arrest was not an essential element of plaintiff's proof in action for false arrest, but was simply a matter of defense to allegations of complaint; thus, failure of plaintiff to establish such would not preclude her from recovering. *Id.*

Sovereign immunity

Complaint which was brought by victim of shooting committed by police officer and which sought to hold police chief liable for negligence in hiring the officer and in failing to train and supervise him adequately and to hold the District of Columbia liable for negligence on the same grounds and vicariously liable for negligence of the police chief stated a cause of action against the District of Columbia and police chief on common-law grounds, notwithstanding fact that the officer was out of uniform at time of the alleged assault on plaintiff. *D. S. Marusa v. District of Columbia et al.* (1973, 484 F. 2d 828, 157 U.S. App. D.C. 348).

Federal Tort Claims Act in no way controls existence or scope of local government's immunity from suit. *Id.*

Action against the mayor of the District of Columbia and others seeking relief with respect to racial discrimination against Negro employees in the department of licenses and inspections was not barred by doctrine of sovereign immunity; the courts have power under the Constitution to remedy racial discrimination by a public agency in any form. *J. T. Watkins et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 941; aff'd 505 F.2d 477, 164 U.S. App. D.C. 370).

District of Columbia is immune from suit for torts of agents under doctrine of municipal immunity only if act complained of was committed in exercise of discretionary function, and if act is committed in exercise of ministerial function, District must respond. *C. Wade v. District of Columbia* (D.C. App. 1973, 310 A. 2d 857).

Municipal immunity of District of Columbia is matter of common-law theory of municipal governmental immunity as developed in case law of jurisdiction, and is not derived from sovereignty of United States or limited to same extent as that of Federal government under Federal Tort Claims Act. *Id.*

District of Columbia may be sued under common-law doctrine of respondent superior for intentional torts of its employees acting within scope of their employment. *Id.*

Suit which sought to recover damages for loss of property stored in a warehouse partially destroyed by rioting mobs and which was based on allegation of negligent failure to provide against such an occurrence failed to state a valid claim for relief against District of Columbia. *D. Amos v. District of Columbia* (D.C. App. 1973, 309 A.2d 305).

Absent legislation to contrary, District of Columbia is not liable for losses incurred by actions of riotous persons as a result of failure of District or its officers to maintain public order. *Id.*

§ 1-903. Refund of taxes when similar assessments have been held void by court decisions—Limitations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-904. Settlements limited to \$10,000—Report to Congress—Appropriations authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-905. Effective date.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-906. Authority to compromise claim or suit—Limitations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-907. Settlement of claims of District employees for damages to or loss of personal property incident to service.

The provisions of sections 240 to 243 of title 31, United States Code, apply in respect to the damage to, or loss of, personal property incident to service of any officer or employee of the government of the District of Columbia, irrespective of whether the damage or loss occurs within or outside the District of Columbia, except that in applying such provisions in connection with the damage or loss of personal property of an officer or employee of the government of the District of Columbia, the terms "agency" and "United States" shall be held to mean the government of the District of Columbia, and the term "head of agency" shall be held to mean the Mayor of the District of Columbia. (Aug. 31, 1964, Pub. L. 88-558, § 3(f), as added Oct. 12, 1968, Pub. L. 90-561, 82 Stat. 998.)

SUCCESSION IN GOVERNMENT

This District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section is also classified to 31 U.S.C. 241(f).

"Sections 240 to 243 of title 31, United States Code" in the original read "this Act" and referred to Pub. L. 88-558. For complete classification of Pub. L. 88-558, see Short Title note for "Military Personnel and Civilian Employees' Claims Act of 1964" under 31 U.S.C. 240.

§ 1-921. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—NATIONAL CAPITAL PLANNING COMMISSION

Sec.

1-1006. Repealed.

1-1007. Public works program—Capital improvements plan.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 7-133, 49-401.

§ 1-1002. The Commission—Composition—Functions.

(a) (1) The National Capital Planning Commission (hereinafter referred to as the "Commission") is created as the central Federal planning agency for the Federal Government in the National Capital, and to preserve the important historical and natural features thereof, except with respect to the United States Capitol buildings and grounds as defined in sections 9-118 and 9-132, and to any extension thereof or additions thereto, or to buildings and grounds under the care of the Architect of the Capitol.

(2) The Mayor of the District of Columbia (hereinafter referred to as the "Mayor") shall be the central planning agency for the government of the District of Columbia (hereinafter referred to as the "District") in the National Capital. The Mayor shall be responsible for coordinating the planning activities of the District government and for preparing and implementing the District elements of the comprehensive plan for the National Capital, which may include land use elements, urban renewal and redevelopment elements, a multi-year program of public works for the District, and physical, social, economic, transportation, and population elements. The Mayor's planning responsibility shall not extend to Federal or international projects and developments in the District, as determined by the Commission, or to the United States Capitol buildings and grounds as defined in sections 9-118 and 9-132, or to any extension thereof or additions thereto, or to buildings and grounds under the care of the Architect of the Capitol. In carrying out his responsibility under this section, the Mayor shall establish procedures for citizen participation in the planning process, and for appropriate meaningful consultation with any State or local government or planning agency in the National Capital region affected by any aspect of a comprehensive plan (including amendments thereto) affecting or relating to the District.

(3) The Mayor shall submit each District element of the comprehensive plan and any amendment thereto, to the Council for revision or modification, and adoption, by act, following public hearings. Following adoption and prior to implementation, the Council shall submit each such element or amendment to the Commission for review and comment with regard to the impact of such element or amendment on the interests or functions of the Federal Establishment in the National Capital.

(4) (A) The Commission shall, within sixty days after receipt of such a District element of the comprehensive plan, or amendment thereto, from the Council, certify to the Council whether such element or amendment has a negative impact on the

interests or functions of the Federal Establishment in the National Capital. If within such sixty days the Commission takes no action with respect to such element or amendment, such element or amendment shall be deemed to have no such negative impact, and such element or amendment shall be incorporated into the comprehensive plan for the National Capital and shall be implemented.

(B) If the Commission finds, within such sixty days, such negative impact, it shall certify its findings and recommendations with respect to such negative impact to the Council. Upon receipt of the Commission's findings and recommendations, the Council may—

(i) reject such findings and recommendations and resubmit such element or amendment, in a modified form, to the Commission for reconsideration; or

(ii) accept such findings and recommendations and modify such element or amendment accordingly.

If the Council accepts such findings and recommendations and modifies such element or amendment under clause (ii), the Council shall submit such element or amendment to the Commission for it to determine whether such modification has been made in accordance with the Commission's findings and recommendations. If, within thirty days after receipt of the modified element or amendment, the Commission takes no action with respect to such element or amendment, it shall be deemed to have been modified in accordance with such findings or recommendations, and shall be incorporated into the comprehensive plan for the National Capital and shall be implemented. If within such thirty days, the Commission again determines such element or amendment to have a negative impact on the functions or interests of the Federal Establishment in the National Capital such element or amendment shall not be implemented.

(C) If the Council rejects the findings and recommendations of the Commission and resubmits a modified element or amendment to it under clause (i), the Commission shall, within sixty days after receipt of such modified element or amendment from the Council, determine whether such modified element or amendment has a negative impact on the interests or functions of the Federal Establishment within the National Capital. If the Commission finds such negative impact it shall certify its findings (in sufficient detail that the Council can understand the basis of the objection of the Commission) and recommendations to the Council, and such element or amendment shall not be implemented. If the Commission takes no action with respect to such modified element or amendment within such sixty days, such modified element or amendment shall be deemed to have no such negative impact and shall be incorporated into the comprehensive plan and it shall be implemented. Any element or amendment which the Commission has determined to have a negative impact on the Federal Establishment in the National Capital, and which is submitted again in a modified form not less than one year from the day it was last rejected by the Commission shall be deemed to be a new element

or amendment for purposes of the review procedure specified in this section.

(D) The Commission and the Mayor shall jointly publish, from time to time as appropriate, a comprehensive plan for the National Capital, consisting of the elements of the comprehensive plan for the Federal activities in the National Capital developed by the Commission, and the District elements developed by the Mayor and the Council in accordance with the provisions of this section.

(E) The Council may grant, upon request made to it by the Commission, an extension of any time limitation contained in this section.

(F) The Commission and the Mayor shall jointly establish procedures for appropriate meaningful continuing consultation throughout the planning process for the National Capital.

(b) The National Capital Planning Commission shall be composed of—

(1) ex officio, the Secretary of the Interior, the Secretary of Defense, the Administrator of the General Services Administration, the Mayor, the Chairman of the Council of the District of Columbia and the chairmen of the committees on the District of Columbia of the Senate and the House of Representatives, or such alternates as each such person may from time to time designate to serve in his stead, and in addition,

(2) five citizens with experience in city or regional planning, three of whom shall be appointed by the President and two of whom shall be appointed by the Mayor. The citizen members appointed by the Mayor shall be bona fide residents of the District of Columbia and of the three appointed by the President at least one shall be a bona fide resident of Virginia and at least one shall be a bona fide resident of Maryland. The terms of office of members appointed by the President shall be for six years, except that of the members first appointed, the President shall designate one to serve two years and one to serve four years. Members appointed by the Mayor shall serve for four years. The members first appointed under this section shall assume their office on January 2, 1975. Any person appointed to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The citizen members shall each receive compensation at the rate of \$100 for each day such member is engaged in the actual performance of duties vested in the Commission in addition to reimbursement for necessary expenses incurred by them in the performance of such duties.

(c) The President shall designate the Chairman of the Commission and the Commission may elect from among its members such other officers as it deems desirable. The Commission is authorized to employ a Director, an executive officer, and such other technical and administrative personnel as it may deem necessary. Further, without regard to section 1-808, the civil service and classification laws, or section 3109 of title 5, U.S. Code, the Commission may employ, by contract or otherwise, the temporary or intermittent (not in excess of one year) services of city planners, architects, engineers, appraisers, and other experts or organizations

thereof, as may be necessary to carry out its functions, and in any such case the rate of compensation shall be fixed by the Commission so as not to exceed the rate usual for similar services.

* * * *

(e) As hereinafter more specifically described in sections 1-1004 to 1-1008, it shall be among the principal duties of the Commission to (1) prepare, adopt, and amend a comprehensive plan for the Federal activities in the National Capital and make related recommendations to the appropriate developmental agencies; (2) serve as the central planning agency for the Federal government within the National Capital region, and in such capacity to review their development programs in order to advise as to consistency with the comprehensive plan; and (3) be the representative of the Federal and District Governments for collaboration with the Regional Planning Council, as hereinafter provided. (As amended Dec. 24, 1973, Pub. L. 93-198, title II, § 203(a), (b), 87 Stat. 779, 782.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The "civil service and classification laws", referred to in subsec. (c), are set forth in 5 U.S.C. See, particularly, 5 U.S.C. §§ 3301 et seq., 5101 et seq., 5331 et seq.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended subsecs. (a) and (b) generally [for prior provisions, see the 1973 ed. of the Code] and amended subsec. (e) by (1) inserting "Federal activities in the" immediately before "National Capital" in clause (1); and (2) striking out "and District Governments," and inserting in lieu thereof "government" in clause (2).

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

COMMISSIONER'S ORDER ASSIGNING PLANNING RESPONSIBILITIES UNDER P.L. 93-198¹

(Commissioner's Order No. 74-146, June 29, 1974.)

This Order is issued by virtue of Reorganization Plan No. 3 of 1967, and in accordance with P.L. 93-198, the District of Columbia Self-Government and Governmental Reorganization Act.

I. *Background of Order:* Title II of the Self-Government and Governmental Reorganization Act, P.L. 93-198 lodges with the Mayor-Commissioner responsibility to take certain actions with respect to local planning namely:

- (a) To be the central planning agency for the District of Columbia;
- (b) To coordinate the planning activities of the District of Columbia Government;
- (c) To prepare and implement the District elements of the Comprehensive Plan for the National Capital;
- (d) To establish processes for citizen participation in the planning process; and

(e) To establish procedures for appropriate meaningful consultation with any state or local government or planning agency in the National Capital Region affected by any aspect of a comprehensive plan (including amendments thereto) affecting or relating to the District.

II. *Purpose:* To carry out the foregoing provisions of the Act in an efficient and effective manner in accordance with principles of sound planning and provision for participation and consultation with citizens.

III. *Delegation:* The Director of the Office of Planning and Management is hereby given responsibility to develop the required local elements of the comprehensive plan and to coordinate the planning activities of the District of Columbia Government on behalf of the Mayor-Commissioner in accordance with PL 93-198.

IV. *Liaison Officers:* The directors of all departments and agencies of the District government are directed to designate planning liaison officers to provide coordination between the planning activities of the individual departments and agencies and the Office of Planning and Management in accordance with PL 93-198.

V. *Citizens Panel:* (a) To assist the Mayor-Commissioner in establishing procedures for citizen participation and to advise the Director of Planning and Management in the preparation of the comprehensive plan, a Citizens Panel broadly representative of all segments of the community, and of the District's various geographical areas, shall be appointed by the Mayor-Commissioner. (b) Staff support for the Citizens Panel shall be provided by the Office of Planning and Management. The Director of the Office of Planning and Management, or his designated alternate shall be an ex-officio member of the Citizens Panel.

VI. *Alternate to NCPC:* The Director of Planning and Management is hereby designated as alternate for the Mayor-Commissioner on the National Capital Planning Commission. The Director of the Office of Housing and Community Development and the Director of the Department of General Services shall serve as additional alternates to the National Capital Planning Commission as required.

VII. *Effective Date:* This order will take effect July 1, 1974.

§ 1-1004. Comprehensive plan for the National Capital—Elements—Procedure.

(a) The Commission is hereby charged with the duty of preparing and adopting a comprehensive, consistent, and coordinated plan for the National Capital, which plan shall include the Commission's recommendations or proposals for Federal developments or projects in the environs, and those District elements, or amendments thereto, of the comprehensive plan adopted by the Council and with respect to which the Commission has not determined a negative impact to exist, which elements or amendments shall be incorporated into such comprehensive plan without change. The Commission shall collaborate with the National Capital Regional Planning Council in the development of those elements of the plan for the National Capital which should be incorporated in the regional plan provided for in section 1-1003. While consistency between the respective proposals of the Commission and the National Capital Regional Planning Council shall be sought, lack of action or agreement by the Council shall not prevent the Commission from adopting any part of its plan or any recommendation or proposal for Federal developments or projects in the environs. The Commission may include in its plan any portion of any plan adopted by the National Capital Regional Planning Council or any planning agency in the environs and from time to time make recommendations of collateral interest to the Council or to the aforesaid agencies.

¹ Planning responsibilities were subsequently assigned to the Municipal Planning Office, see Org. Ord. No. 50, set out in the appendix to title 1, Administration.

(b), (c) Repealed. Dec. 24, 1973, Pub. L. 93-198, title II, § 203(c) (3), 87 Stat. 782.

(As amended Dec. 24, 1973, Pub. L. 93-198, title II, § 203(c), 87 Stat. 782.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section by (1) striking out "Federal and District developments or projects in the environs" in the first sentence of subsec. (a) and inserting "Federal developments or projects in the environs, and those District elements, or amendments thereto, of the comprehensive plan adopted by the Council and with respect to which the Commission has not determined a negative impact to exist, which elements or amendments shall be incorporated into such comprehensive plan without change" in lieu thereof; (2) striking out of the third sentence of subsec. (a) "within the District of Columbia" immediately after "plan", and "or District" immediately after "Federal"; and (3) repealing subssecs. (b) and (c).

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCE

Comprehensive plan for zoning, see § 5-414.

NOTES TO DECISIONS

Environmental impact

Although the District of Columbia Zoning Commission and the National Capital Planning Commission are not required to prepare an environmental impact statement in connection with applications under the District's zoning regulations for planned unit development or for amendment of zoning maps and zoning regulations, the environmental policies delineated in the National Environmental Policy Act should find expression in the planning and zoning process in the District; proper avenue for implementation of the purposes of the NEPA is in the planning operations of the National Capital Planning Commission, particularly in formulation of the Comprehensive Plan. *McLean Gardens Residents Association, Inc., et al. v. National Capital Planning Commission et al.* (1974, 390 F. Supp. 165).

§ 1-1005. Proposed Federal and District developments and projects.

(c) The provisions of section 5-428, are extended to include public buildings erected by any agency of the Government of the District of Columbia within the boundaries of the central area of the District, as such central area may be defined and from time to time redefined by concurrent action of the Commission and the Council, except that the Commission shall transmit its approval or disapproval respecting any such building within thirty days after the day it was submitted to the Commission.

(e) It is the intent of this section to obtain cooperation and correlation of effort between the various agencies of the Federal Government which are responsible for public developments and projects, including the acquisition of land. These agencies,

therefore, shall look to the Commission and utilize it as the central planning agency for the Federal activities in the National Capital region. To aid the Commission in carrying out this function, plans, data, and records, or copies thereof, necessary to the Commission shall be furnished upon its request by such Federal and District governmental agencies; and the Commission shall likewise furnish related plans, data, and records, or copies thereof, to Federal and District of Columbia governmental agencies upon request. (As amended Dec. 24, 1973, Pub. L. 93-198, title II, § 203(d), 87 Stat. 782.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended subsec. (c) and the first and second sentences of subsec. (e) generally. For prior provisions, see the 1973 ed. of the Code.

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

NOTES TO DECISIONS

Injunctions

Without finding abuse of district court's discretion in denying preliminary injunction against continued construction of Washington Bulk Mail Center, case would be remanded so that reconsideration could be given oil and water runoff problem and to whether an impact statement was required, and also to the possibility, taking into account the advanced stage of project construction, the district court might conjoin any continued denial of injunctive relief with equitable conditions more protective of the environment than those already provided. *Maryland-National Capital Park and Planning Commission v. U.S. Postal Service* (1973, 487 F. 2d 1029, 159 U.S. App. D.C. 158; remanding 349 F. Supp. 1212).

Preliminary injunction restraining further construction of bulk mail center on 63-acre tract forming part of 800-acre industrial area would not issue where determination that facility would not significantly affect environment and that environmental impact statement was not required was not arbitrary, capricious or abuse of discretion, plaintiff, a park planning commission, failed to establish likelihood of success on the merits, failed to establish irreparable injury and that defendant failed to comply with governing executive order and construction had commenced and cost of delay in continuing construction was not insignificant. *Maryland-National Capital Park and Planning Commission v. U.S. Postal Service* (1972, 349 F. Supp. 1212; rem'd 487 F.2d 1029, 159 U.S. App. D.C. 159).

§ 1-1006. Repealed. Dec. 24, 1973, Pub. L. 93-198, title II, § 203(e), 87 Stat. 782.

Section, act June 6, 1924, ch. 270, § 6, as added July 19, 1952, 66 Stat. 789, ch. 949, § 1, directed the Commission to prepare a major thoroughfare plan and a mass transportation plan.

EFFECTIVE DATE OF REPEAL

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

§ 1-1007. Public works program—Capital improvements plan.

(a) The Commission shall recommend a six-year program of public works projects for the Federal

Government which it shall review annually with the agencies concerned. To this end, each Federal agency shall submit to the Commission in the first quarter of each fiscal year a copy of its advance program of capital improvements within the National Capital and its environs.

(b) The Mayor shall submit to the commission, by February 1 of each year, a copy of the multiyear capital improvements plan for the District developed by him under section 47-223. The Commission shall have thirty days within which to comment upon such plan but shall have no authority to change or disapprove of such plan. (June 6, 1924, ch. 270, § 7, as added July 19, 1952, 66 Stat. 789, ch. 949, § 1, and amended Dec. 24, 1973, Pub. L. 93-198, title II, § 203 (f), 87 Stat. 782.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section generally. For prior provisions, see the 1973 ed. of the Code.

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 1-1008. Zoning and subdivision functions.

(a) The Commission may make a report and recommendation to the Zoning Commission of the District of Columbia, as provided by section 5-417, on proposed amendments of the zoning regulations and maps as to the relation, conformity, or consistency of such amendments with the comprehensive plan for the National Capital. The Commission may also submit to the said Zoning Commission proposed amendments or general revisions to the zoning regulations or the zoning map for said District.

* * * * *

(As amended Dec. 24, 1973, Pub. L. 93-198, title II, § 203(g), 87 Stat. 783.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence of subsec. (a) by (1) inserting “, as provided by section 5-417,” immediately after “Zoning Commission of the District of Columbia”; (2) substituting “relation, conformity, or consistency” for “relation or conformity”; and (3) substituting “for the National Capital” for “of the District of Columbia” at the end thereof.

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

CROSS REFERENCE

Zoning regulations, see §§ 5-413, 5-414.

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NOTES TO DECISIONS

Judicial review

In reviewing refusal by Zoning Commission to enact interim amendment to zoning ordinance preventing major construction not in conformance with National Capital Planning Commission's comprehensive recommendations as to development of waterfront area until completion of pending area study, Court of Appeals would consider only whether Commission acted arbitrarily and capriciously, i.e., whether its decision had no substantial relationship to the general welfare. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F.2d 402, 155 U.S. App. D.C. 233).

Actions of Zoning Commission are entitled to presumption of validity; however, the Commission must put forward or the court must be otherwise able to discern some basis in fact and law to justify Commission's action as consistent with reasonableness. *Id.*

Recommendation to Zoning Commission

The Zoning Commission, in determining whether to adopt interim amendment to zoning ordinance preventing major construction in waterfront area until completion of study looking toward implementation of National Capital Planning Commission's comprehensive land use plan, was not bound to follow NCPC's recommendation to adopt interim amendment; Zoning Commission was not required to show a compelling public interest before it could override recommendation. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F.2d 402, 155 U.S. App. D.C. 233).

§ 1-1012. Appropriation for acquisition of such lands—Control—Use.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—ELECTIONS

Sec.

- 1-1101. Election of electors of President and Vice President, Delegate, the members of the Board of Education and of the District Council, the Mayor, and officials of political parties.
- 1-1103. Board of Elections and Ethics—Terms of office—Vacancies—Designation of Chairman.
- 1-1104a. Same; Compensation from more than one source.
- 1-1105a. Council authority over elections.
- 1-1105b. Election wards.
- 1-1107. Registration—Conditions for registration—Registration application and notification—Hearings—Appeals.
- 1-1108. Candidates for office—Form, date, and time of day for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors—Nomination and election of Delegate, Mayor, Chairman and members of Council—Election of candidates by primary or party runoff election—Nominating petition—Arrangement of names on ballot—Designations of offices of local party committees—Nominating petition for election of members of Board of Education—Posting of petitions in a public place—Challenging validity of petition—Board of Elections and Ethics to determine validity of petition—Appeal—Arrangement of names on ballot.

Sec.

1-1110. Dates for holding elections—Votes cast for President and Vice President to be counted as votes for presidential electors—Voting hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Filling vacancies on Board of Education.

1-1113. Appropriations.

1-1115. Candidacy for more than one office not permitted—Choice of nominations—Withdrawal from multiple nominations—Candidacy of officeholder for other office restricted.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1-141, 1-171h, 1-291, 1-1121, 1-1156, 31-101.

§ 1-1101. Election of electors of President and Vice President, Delegate, the members of the Board of Education and of the District Council, the Mayor, and officials of political parties.

In the District of Columbia electors of President and Vice President of the United States, the Delegate to the House of Representatives, the members of the Board of Education, the members of the Council of the District of Columbia, the Mayor and the following officials of political parties in the District of Columbia shall be elected as provided in this chapter:

* * * * *

(As amended Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(1), 87 Stat. 832.)

AMENDMENT

1973—Section 751(1) of Dec. 24, 1973, Pub. L. 93-198, inserted "the members of the Council of the District of Columbia, the Mayor" immediately after "Board of Education."

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771(e) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided that Part E of title VII [comprising sections 751 and 752, which amended §§ 1-1101, 1-1102, 1-1110, 1-1115, and enacted § 1-1105a] is effective on the date on which title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum. The charter was approved by the voters on May 7, 1974.

SHORT TITLE

The first section of Act Dec. 16, 1975, D.C. Law 1-37, provided "That this act [amending §§ 1-1105, 1-1107, 1-1109, and 1-1114] may be cited as the 'Voter Registration Act of 1975'."

POLITICAL PARTICIPATION IN FIRST ELECTIONS FOR MAYOR AND COUNCIL

Section 724 of the District of Columbia Self-Government and Governmental Reorganization Act, as added Apr. 17, 1974, Pub. L. 93-268, § 3(a), 88 Stat. 86, provided:

"Sec. 724. (a) In order to provide continuity in the government of the District of Columbia during the transition from the appointed government to the elected government provided for under this Act, no person employed by the United States or by the government of the District of Columbia shall be prohibited by reason of such employment—

"(1) from being a candidate in the first primary election and general election held under this Act for the office of Mayor or Chairman or member of the Council of the District of Columbia provided for under title IV of this Act, and

"(2) if such a candidate, from taking an active part in political management or political campaigns in any election referred to in paragraph (1) of this subsection.

"(b) Such candidacy shall be deemed to have commenced on the day such person obtains from the Board of Elections an official nominating petition with his name stamped thereon, and shall terminate—

"(1) in the case of such candidate who ceases to be eligible as a nominee for the office with respect to which such petition was obtained by reason of his inability or failure to qualify as a bona fide nominee prior to the expiration of the final date for filing such petition under the election laws of the District of Columbia, on the day following such expiration date;

"(2) in the case of such candidate who is elected to any such office with respect to which such nominating petition was obtained, on the day such candidate takes office following the election held with respect thereto;

"(3) in the case of such candidate who is defeated in a primary election held to nominate candidates for the office with respect to which such nominating petition was obtained, on the expiration of the thirty day period following the date of such primary election; and

"(4) in the case of such candidate who fails to be elected in a general election to any such office with respect to which such nominating petition was obtained, on the expiration of the thirty day period following the date of such election.

"(c) The provisions of this section shall terminate as of January 2, 1975."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1108, 1-1110, 47-1567f.

§ 1-1102. Definitions.

For the purposes of this chapter—

* * * * *

(2) Except as provided in paragraph (7) of this section, the term "qualified elector" means a citizen of the United States (A) who resides or is domiciled in the District and who does not claim voting residence or right to vote in any State or Territory; (B) who is, or will be on the day of the next election, eighteen years old; and (C) who is not mentally incompetent as adjudged by a court of competent jurisdiction.

(3) The term "Board" means the District of Columbia Board of Elections and Ethics provided for by section 1-1103.

* * * * *

(8) The term "Council" or "Council of the District of Columbia" means the Council of the District of Columbia established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act.

(9) The term "Mayor" means the office of Mayor of the District of Columbia established pursuant to the District of Columbia Self-Government and Governmental Reorganization Act.

(As amended Aug. 14, 1973, Pub. L. 93-92, § 1(1), 87 Stat. 311; Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(2), 87 Stat. 832; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

REFERENCE IN TEXT

The District of Columbia Self-Government and Governmental Reorganization Act, referred to in pars. (8) and (9), is the Act of Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 774. For classification of the Act to the Code, see the Parallel Reference Tables. See sections 1-141 and 1-161 for establishment of the Council and the office of Mayor.

AMENDMENTS

1974—Section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, amended par. (3) by substituting "District of Columbia Board of Elections and Ethics" for "Board of Elections for the District of Columbia".

1973—Pars. (8) and (9) added by section 751(2) of Act Dec. 24, 1973, Pub. L. 93-198.

Par. (2)(A). Section 1(1) of Act Aug. 14, 1973, Pub. L. 93-92, amended par. (2)(A) by inserting at the

beginning thereof "who resides or is domiciled in the District and"; and by striking out at the end thereof "and who, for the purpose of voting in an election under this chapter, has resided or has been domiciled in the District continuously since the beginning of the ninety-day period ending on the day of such election, except in the case of an election of electors of President and Vice President of the United States the period shall be thirty days;".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-198

Amendment effective May 7, 1974, see note under § 1-1101.

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92

Section 3 of Act Aug. 14, 1973, Pub. L. 93-92, provided: "The amendments made by this Act [amending §§ 1-1102, 1-1105, 1-1108, 1-1109, 1-1110, 1-1111, 31-101] shall take effect on and after the date of enactment of this Act."

CROSS REFERENCE

Election wards established by Council, § 1-1105b.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-171h, 1-291, 1-1107, 31-101.

§ 1-1103. Board of Elections and Ethics—Terms of office—Vacancies—Designation of Chairman.

(a) There is created a District of Columbia Board of Elections and Ethics (hereafter in this section referred to as the "Board"), to be composed of three members, no more than two of whom shall be of the same political party, appointed by the Mayor, with the advice and consent of the Council. Members shall be appointed to serve for terms of three years, except of the members first appointed under this Act. One member shall be appointed to serve for a one-year term, one member shall be appointed to serve for a two-year term, and one member shall be appointed to serve for a three-year term, as designated by the Mayor.

(b) Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the member whose vacancy he is filling.

(c) A member may be reappointed, and, if not reappointed, the member shall serve until his successor has been appointed and qualifies.

(d) The Mayor shall, from time to time, designate the Chairman of the Board. (Aug. 12, 1955, 69 Stat. 699, ch. 862, § 3; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(2); Dec. 24, 1973, Pub. L. 93-198, title IV, § 491, 87 Stat. 809; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

AMENDMENTS

1974—Section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, amended subsec. (a) by substituting "Board of Elections and Ethics" for "Board of Elections".

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section generally. For prior provisions, see the 1973 ed. of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this amendment is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the Dis-

trict of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in the amendments to this section made by Act Dec. 24, 1973, Pub. L. 93-198.

CROSS REFERENCES

Change of name to Board of Elections and Ethics, see § 1-1156.

Director of Campaign Finance, establishment of office within Board of Elections and Ethics, see § 1-1151.

Nominating Committee to nominate individuals for appointment as members of Board of Elections and Ethics and for vacancies occurring on such Board, see § 1-1155.

§ 1-1104. Qualifications and compensation of members.

* * * * *

(b) Each member of the Board shall be paid compensation at the rate of \$100 for each eight hour period with a limit of \$12,500 per annum, while performing duties under this chapter, except during 1974 such compensation shall be paid without regard to such annual limitation. Except as provided in subsection (a) no person shall be ineligible to serve or to receive compensation as a member of the Board because he occupies another office or position or because he receives compensation (including retirement compensation) from another source. The right to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his service or receipt of compensation as a member of the Board, or as an employee of the Board. (As amended Aug. 14, 1974, Pub. L. 93-376, title VII, § 706(b), 88 Stat. 471.)

AMENDMENT

1974—Section 706(b) of Act Aug. 14, 1974, Pub. L. 93-376, amended the first sentence of subsec. (b) generally. Prior to amendment, the sentence read: "Each member of the Board shall be paid compensation at the rate of \$75 per day with a limit of \$11,250 per annum, while performing duties under this chapter."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective Aug. 14, 1974, see section 705(b) of the Act Aug. 14, 1974, Pub. L. 93-376, set out as a note under § 1-1121.

§ 1-1104a. Same; Compensation from more than one source.

(a) Except as provided in this Act, no person shall be ineligible to serve or to receive compensation as a member of the Board of Elections and Ethics because he occupies another office or position or because he receives compensation (including retirement compensation) from another source.

(b) The right to another office or position or to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his service or receipt of compensation as a member of such Board, if such service does not interfere with the discharge of his duties in such other office or position. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 733, 87 Stat. 822; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774).

For classification of the Act to the Code, see the Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of the District of Columbia Election Act which comprises this chapter.

AMENDMENT

1974—Section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, amended subsec. (a) by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

§ 1-1105. Functions and authority of Board—Presidential preference primary election.

(a) The Board shall—

(1) maintain a registry, keeping it accurate and current;

(2) take whatever action is necessary and appropriate to actively locate, identify, and register qualified electors;

(3) conduct elections;

(4) provide for recording and counting votes by means of ballots or machines or both and not less than five days before each election held pursuant to this chapter, publish in one or more newspapers of general circulation in the District a sample copy of the official ballot to be used in any such election;

(5) divide the District into appropriate voting precincts, each of which shall contain at least three hundred and fifty registered persons; draw precinct lines within the election wards created by the Council, subject to the approval of the Council;

(6) operate polling places;

(7) develop and administer procedures for absentee registration for and voting in any election held under this chapter by any person included within the categories referred to in paragraphs (1), (2), or (3) of section 101 of the Federal Voting Assistance Act of 1955 (69 Stat. 584) [42 U.S.C. § 1973cc];

(8) certify nominees and the results of elections;

(9) prescribe such regulations as it considers necessary in order to carry out the purposes of this chapter; and

(10) perform such other duties as are imposed upon it by this chapter.

(b) (1) The Board shall, on the first Tuesday in May of each presidential election year, conduct a presidential preference primary election within the District of Columbia in which the registered qualified voters therein may express their preference for candidates of each political party of the District of Columbia for nomination for President.

(2) No person shall be listed on the ballot as a candidate for nomination for President in such primary unless there shall have been filed with the Board no later than sixty days before the date of such presidential primary election a petition on behalf of his candidacy signed by the candidate and at least one thousand qualified electors of the District of Columbia who are registered under section 1-1107, and of the same political party as the nominee.

(3) Candidates for delegate and alternates where permitted by political party rules to a particular political party national convention convened to nominate that party's candidate for President shall be listed on the ballot of the presidential preference primary held under this chapter as—

(A) full slates of candidates for delegates supporting a candidate for nomination for President if there shall have been filed with the Board, no later than sixty days before the date of such presidential primary, a petition on behalf of such slate's candidacy signed by the candidates on the slate, the candidate for nomination for President supported by the slate, and by at least one thousand qualified electors of the District of Columbia who are registered under section 1-1107 and are of the same political party as the candidates on such slate;

(B) full slates of candidates for delegates not committed to support any named candidate for nomination for President if there shall have been filed with the Board, no later than sixty days before the date of such presidential primary, a petition on behalf of such slate's candidacy, signed by the candidates on the slate and by at least one thousand qualified electors of the District of Columbia who have registered under section 1-1107 and are of the same political party as the candidates on such slate;

(C) an individual candidate for delegate supporting a candidate for nomination for President if there shall have been filed with the Board, no later than sixty days before the date of such presidential primary, a petition on behalf of such candidate, signed by the candidate and by at least one thousand qualified electors of the District of Columbia who have registered under section 1-1107 and are of the same political party as the candidate; or

(D) an individual not committed to support any named candidate for nomination for President if there shall have been filed with the Board, no later than sixty days before the date of such presidential primary, a petition on behalf of such candidate, signed by the candidate and by at least one thousand qualified electors of the District of Columbia who have registered under section 1-1107 and are of the same political party as the candidate.

No candidate for delegate or alternate may be listed on the ballot unless such candidate was properly selected according to the rules of his political party relating to the nomination of candidates for delegate or alternate.

* * * * *

(6) Repealed. Aug. 14, 1973, Pub. L. 93-93, § 1(5), 87 Stat. 312.

(c) Each member of the Board and persons authorized by the Board may administer oaths to persons executing affidavits pursuant to section 1-1108. It may provide for the administering of such other oaths as it considers appropriate to require in the performance of its functions.

(d) The Board may permit either persons temporarily absent from the District or persons physically unable to appear personally at an official registration place to register for the purpose of voting in any election held under this chapter.

(e) The Board may employ necessary personnel, at such rates of compensation as may be fixed by the Commissioner of the District of Columbia, without reference to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]. The Board, at the request of the Director of Campaign Finance, shall provide such employees, subject to the compensation provisions of this subsection, as requested to carry out the powers and duties of the Director. Employees so assigned to the Director shall, while so assigned, be under the direction and control of the Director.

(f) Notwithstanding the provisions of section 1-215, the Board may accept volunteer services for the purposes of voter education and registration.

(g) The Board shall prescribe such regulations as may be necessary to insure that all persons responsible for the proper administration of this chapter maintain a position of strict impartiality and refrain from any activity which would imply support of or opposition to (1) a candidate or group of candidates for office in the District of Columbia, or (2) any political party or political committee. As used in this subsection, the terms "office", "political party", and "political committee" shall have the same meaning as that prescribed in section 1-1121. (As amended Aug. 14, 1973, Pub. L. 93-92, § 1(2)-(7), 87 Stat. 311, 312; Jan. 3, 1975, Pub. L. 93-635, § 13, 88 Stat. 2177; Dec. 16, 1975, D.C. Law 1-37, § 2(1), (2), 22 DCR 3426; Dec. 16, 1975, D.C. Law 1-38, § 4, 22 DCR 3433.)

AMENDMENTS

1975—Subsec. (a). Section 4 of act Dec. 16, 1975, D.C. Law 1-38, amended par. (4) [redesignated as par. (5) by D.C. Law 1-37] by substituting "draw precinct lines within the election wards created by the Council, subject to the approval of the Council" for "divide the District into eight compact and contiguous election wards which shall include such numbers of precincts as will provide approximately equal population within each ward; and reapportion the wards accordingly after each decennial census".

Section 2(1) of act Dec. 16, 1975, D.C. Law 1-37, struck out par. (2) and inserted in lieu thereof new pars. (2) and (3), and renumbered pars. (3) through (9) as pars. (4) through (10).

Subsec. (c). Section 2(2) of such act struck out reference to section 1-1107.

Subsec. (e). Section 13(a) of Act Jan. 3, 1975, Pub. L. 93-635, amended subsec. (e) by adding the second and third sentences.

Subsec. (g). Section 13(b) of such Act added subsec. (g).

1973—Subsec. (a). Section 1(2) of Act Aug. 14, 1973, Pub. L. 93-92 amended subsec. (a) by (A) striking out "and" at the end of par. (7), (B) by redesignating par. (8) as par. (9), and (C) by inserting after par. (7) a new par. (8) as above set out.

Subsec. (b)(1). Section 1(3) of such Act amended subsec. (b)(1) by striking out "after the first Monday" immediately after the word "Tuesday".

Subsec. (b)(2)(3). Section 1(4) of such Act amended subsec. (b)(2)(3) by striking out "forty-five" wherever it appeared and inserting "sixty" in lieu thereof.

Subsec. (b)(6). Section 1(5) of such Act repealed subsec. (b)(6). Prior to repeal, subsec. (b)(6) read:

"(6) The Board shall by regulation specify such additional details as may be necessary and proper to effectuate the purposes and provisions of this subsection."

Subsec. (d). Section 1(6) of such Act amended subsec. (d) to read as above set out. Prior to amendment, subsec. (d) read:

"(d) The Board may prescribe such regulations as it considers necessary to carry out the purposes of this chapter, including, a regulation permitting either persons temporarily absent from the District or persons physically unable to appear personally at an official registration place, to register in the manner prescribed in such regulation for the purpose of voting in any election held pursuant to this chapter."

Subsec. (f). Section 1(7) of such Act added subsec. (f) to read as above set out.

EFFECTIVE DATE OF 1975 AMENDMENT BY D.C. LAW 1-38

See effective date note under § 1-1105b.

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92

See note under § 1-1102.

DISTRICT CHARTER REFERENDUM

See note under § 1-121.

POWERS OF THE PRESIDENT DURING TRANSITIONAL PERIOD

Section 721 of title VII of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 821, provided: "The President of the United States is hereby authorized and requested to take such action during the period following the date of the enactment of this Act and ending on the date of the first meeting of the Council, by Executive order or otherwise, with respect to the administration of the functions of the District government, as he deems necessary to enable the Board of Elections properly to perform its functions under this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1102, 1-1107.

NOTES TO DECISIONS

Constitutional questions

Even though the constitutional questions regarding challenge of the Socialist Workers' party to the District of Columbia Campaign Finance Reform and Conflict of Interest Act (§§ 1-1121 et seq.) based on ground that the application of Act to it would subject members whose names must be disclosed to harassment must be ruled on directly, it was within three-judge district court's power to direct the Board of Elections and Ethics to provide a suitable forum for plaintiffs' claims and, should the claims be proved, to provide an appropriate remedy. *J. Doe et al. v. R. Martin, Chairman, et al.* (1975, 404 F. Supp. 753).

Write-in votes

The Board of Elections should exercise its rule-making power to facilitate write-in votes in the future for candidates for president and vice president. *L. R. Kamins v. Board of Elections for the District of Columbia* (D.C. App. 1974, 324 A.2d 187).

§ 1-1105a. Council authority over elections.

Notwithstanding any other provision of this Act or of any other law, the Council shall have authority to enact any act or resolution with respect to matters involving or relating to elections in the District. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 752, 87 Stat. 836.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774).

For classification of the Act to the Code, see the Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of the District of Columbia Election Act which comprises this chapter.

EFFECTIVE DATE

Section 771(e) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided that Part E of title VII [comprising sections 751 and 752, which amended §§ 1-1101, 1-1102, 1-1110, 1-1115, and enacted § 1-1105a] is effective on the date on which title IV is accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-128.

§ 1-1105b. Election wards.

The Council of the District of Columbia shall divide the District into eight compact and contiguous election wards which shall include such numbers of precincts as will provide approximately equal population within each ward; and reapportion the wards accordingly after each decennial census. (Dec. 16, 1975, D.C. Law 1-38, § 2, 22 DCR 3433.)

CODIFICATION

Section was enacted as part of the Boundaries Act of 1975, and not as part of the District of Columbia Election Act which comprises this chapter.

EFFECTIVE DATE

Section 7 of act Dec. 16, 1975, D.C. Law 1-38, provided: "This act, and the amendments made by this act [enacting § 1-1105b and amending § 1-1105], shall be effective as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Dec. 16, 1975, D.C. Law 1-38, provided "That this act [enacting § 1-1105b and amending § 1-1105] may be cited as the 'Boundaries Act of 1975'."

EXISTING WARD BOUNDARIES

Section 3 of act Dec. 16, 1975, D.C. Law 1-38, provided: "The order of the District of Columbia Board of Elections and Ethics of June 25, 1971, is repealed, except the boundaries of the election wards established by such order shall remain in effect until changed by the Council of the District of Columbia according to law."

BOUNDARIES OF SERVICE AREAS

Sections 5 and 6 of act Dec. 16, 1975, D.C. Law 1-38, provided:

"Sec. 5. The Commissioner's Order establishing the Service Areas (C.O. No. 70-142, April 20, 1970, as amended by C.O. No. 72-95, April 21, 1972) is amended by striking out the maps attached thereto and incorporated therein. On and after the effective date of this act, the boundaries of those Service Areas shall be identical to the boundaries that may be established from time to time for the election wards. Beginning with such effective date, the boundaries of the Service Areas shall be the boundaries established for the election wards in section 3 of this act.

"Sec. 6. The Mayor shall report to the Council within 90 days after the date of enactment of this act with respect to establishing a uniform and coterminous delivery system for all city services not delivered within the service areas defined in section 5 of this act."

§ 1-1106. Board independent agency—District to furnish facilities to Board—Seal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1107. Registration—Conditions for registration—Registration application and notification—Hearings—Appeals.

* * * * *

(b) No person shall be registered unless—

(1) he is a qualified elector;

(2) he executes a registration application by signature or mark (unless prevented by physical disability) on the form prescribed by the Board pursuant to subsection (c) showing that he meets each of the requirements specified in paragraphs (2) and (7) of section 1-1102 for a qualified elector or qualifies under procedures established by the Board under paragraph (6) of subsection (a) of section 1-1105, and, if he desires to vote in a party election, such form shall show his political party affiliation; and

(3) the Board accepts his registration as provided in subsection (e).

(c) (1) In administering the provisions of subsection (b) (2), the Board shall prepare and use a registration application form in which each request for information is readily understandable and can be satisfied by a concise answer or mark. The Board may request additional information required to determine whether the registrant meets the requirements imposed by or referred to in subsection (b).

(2) The registration application form shall be designed by the Board to provide an easily understood method of registering to vote by mail and shall be mailable to the Board postage prepaid. Such forms shall have printed on them in bold face type the penalties for fraudulently attempting to register to vote.

(d) After January 1, 1976, the Board shall distribute a sufficient quantity of such forms to post offices, libraries, schools, firehouses, churches, banks, settlement houses, food establishments, in the District of Columbia, and such other places in the District of Columbia, as the Board deems appropriate. Once every second year, the Board shall mail registration application forms and information on how to obtain more registration application forms to each residential mailing address in the District no earlier than 75 days and no later than 60 days before the primary election beginning with the primary election to be held in September, 1976.

(e) Within 15 calendar days after receipt of a registration application form from any applicant, the Board shall mail a nonforwardable registration notification form to such applicant advising him of the acceptance or rejection of his registration application. Such notification form shall include the applicant's name, address, birth date, party affiliation (if any), ward and precinct number, the address of his polling place, and the hours during which the

polls will be open. The Board may include along with such registration notification any voter education materials it deems appropriate. Registration of an applicant shall be deemed effective on the date the Board mails such registration notification to the applicant, except any registration notification form undelivered and returned to the Board shall be deemed to be a challenged application subject to the provisions of subsection (f).

(f) In the case where a registration application is deemed to be challenged under subsection (e), or in the case where a registration application is actually challenged, the Board shall immediately notify the concerned applicant of the challenge by first class mail. Such applicant, or any qualified candidate, may request a hearing before the Board on the challenge within 5 days after such notification is mailed. Upon request for such a hearing the Board shall hold such hearing within 7 days after receipt of such request. At such hearing the applicant, and any interested party, may appear and give testimony on the question of the challenge. The Board shall determine such challenge within 2 days after such hearing. Any aggrieved party may appeal the decision of the Board to the Superior Court of the District of Columbia within 3 days after the date of the Board's decision. The decision of the Court shall be final and not appealable. If any part of this challenge process is pending on the date of an election held under this chapter, the applicant whose registration is being challenged shall be permitted to cast a ballot in such election which is marked "challenged". Such ballot shall be counted in the election if the applicant is ultimately deemed to be a qualified registered elector.

(g) (1) The registry shall be open during reasonable hours, except that the registry shall not be open (A) during the thirty-day period ending on the first Tuesday following the first Monday in November of each calendar year, (B) during the thirty-day period ending on the first Tuesday in May in each even-numbered year, and (C) during such other period as the Board may provide in the case of a special or runoff election.

(2) The Board may close the registry on Saturdays, Sundays, and holidays. While the registry is open, any person may apply for registration or change his registration. (As amended Dec. 16, 1975, D.C. Law 1-37, § 2(3)-(5), 22 DCR 3426.)

AMENDMENTS

1975—Subsec. (b). Section 2(3) of act Dec. 16, 1975, D.C. Law 1-37, substituted "application" for "affidavit" in par. (2); struck out the period at the end of par. (2) and inserted "; and" in lieu thereof; and added par. (3).

Subsec. (c). Section 2(4) of such act inserted "(1)" immediately before "In administering"; substituted "application" for "affidavit"; and added a new par. (2).

Subsec. (d). Section 2(5) of such act redesignated subsec. (d) as "(g)"; struck out subsec. (e); and added new subssecs. (d)-(f).

Subsec. (e). Section 2(5) of such act struck out subsec. (e) and added new subsec. (e).

Subsec. (f). Section 2(5) added subsec. (f).

Subsec. (g). Section 2(5) redesignated subsec. (d) as "(g)".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-171g, 1-1105, 1-1108.

§ 1-1108. Candidates for office—Form, date, and time of day for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors—Nomination and election of Delegate, Mayor, Chairman and members of Council—Election of candidates by primary or party runoff election—Nominating petition—Arrangement of names on ballot—Designations of offices of local party committees—Nominating petition for election of members of Board of Education—Posting of petitions in a public place—Challenging validity of petition—Board of Elections and Ethics to determine validity of petition—Appeal—Arrangement of names on ballot.

(a) (1) Each candidate for election to the office of national committeeman or alternate, or national committeewoman or alternate, and for election as a member or official designated for election at large under clause (4) of section 1-1101, shall be a qualified elector registered under section 1-1107 who has been nominated for such office, or for election as such member or official, by a nominating petition (A) signed by not less than five hundred qualified electors registered under such section 1-1107, who are of the same political party as the candidate, and (B) filed with the Board not later than the sixtieth day before the date of the election held for such office, member, or official.

* * * * *

(d) Each political party who has had its candidate elected as President of the United States after January 1, 1950, shall be entitled to nominate candidates for presidential electors. The executive committee of the organization recognized by the national committee of each such party as the official organization of that party in the District of Columbia shall nominate by appropriate means the presidential electors for that party. Nominations shall be made by message to the Board of Elections and Ethics on or before September 1 next preceding a presidential election.

* * * * *

(f) A political party which does not qualify under subsection (d) of this section may have the names of its candidates for President and Vice President of the United States printed on the general election ballot provided a petition nominating the appropriate number of candidates for presidential electors signed by at least 1 per centum of registered qualified electors of the District of Columbia, as of July 1 of the year in which the election is to be held is presented to the Board on or before the third Tuesday in August preceding the date of the presidential election.

* * * * *

(h) (1) (A) The Delegate, Mayor, Chairman of the District Council and the four at-large members of the Council shall be elected by the registered qualified electors of the District of Columbia in a general election. Each candidate for the office of Delegate, Mayor, Chairman of the District Council, and

at-large members of the Council in any general election shall, except as otherwise provided in subsection (j) of this section and section 1-1110(d), have been elected by the registered qualified electors of the District as such candidate by the next preceding primary election.

(B) (i) A member of the office of Council (other than the Chairman and any member elected at large) shall be elected in a general election by the registered qualified electors of the respective ward of the District from which the individual seeking such office was elected as a candidate for such office as provided in clause (ii) of this paragraph.

(ii) Each candidate for the office of member of the Council (other than Chairman and at-large members) shall, except as otherwise provided in subsection (j) of this section and section 1-1110(d), have been elected as such a candidate, by the registered qualified electors of the ward of the District from which such individual was nominated, at the next preceding primary election to fill such office within that ward.

(2) The nomination and election of any individual to the office of Delegate, Mayor, Chairman of the Council and member of the Council shall be governed by the provisions of this chapter. No political party shall be qualified to hold a primary election to select candidates for election to any such office in a general election unless, in the next preceding election year, at least seven thousand five hundred votes were cast in the general election for a candidate of such party for any such office or for its candidates for electors of President and Vice President.

(i) (1) Each individual in a primary election for candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council shall be nominated for any such office by a petition (A) filed with the Board not later than sixty days before the date of such primary election, and (B) signed by at least two thousand registered qualified electors of the same political party as the nominee, or by 1 per centum of the duly registered members of such political party, whichever is less, as shown by the records of the Board of Elections and Ethics as of the one hundred fourteenth day before the date of such election.

(2) Each individual in a primary election for candidate for the office of member of the Council (other than the Chairman and at-large members) shall be nominated for such office by a petition (A) filed with the Board not later than sixty days before the date of such primary election, and (B) signed by at least two hundred and fifty persons in the ward from which such individual seeks election who are duly registered in such ward under section 1-1107, and who are of the same political party as the nominee.

(3) A nominating petition for a candidate in a primary election for any such office may not be circulated for signature before the one hundred fourteenth day preceding the date of such election and may not be filed with the Board before the eighty-fifth day preceding such date. The Board may prescribe rules with respect to the preparation and presentation of nominating petitions. The Board shall

arrange the ballot of each political party in each such primary election as to enable a voter of such party to vote for nominated candidates of that party.

(j) (1) A duly qualified candidate for the office of Delegate, Mayor, Chairman of the Council, or member of the Council, may subject to the provisions of this subsection, be nominated directly as such a candidate for election for such office (including any such election to be held to fill a vacancy). Such person shall be nominated by petition (A) filed with the Board not less than sixty days before the date of such general election, and (B) in the case of a person who is a candidate for the office of member of the Council (other than the Chairman or an at-large member), signed by five hundred voters who are duly registered under section 1-1107 in the ward from which the candidate seeks election; and in the case of a person who is a candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council, signed by duly registered voters equal in number to $1\frac{1}{2}$ per centum of the total number of registered voters in the District, as shown by the records of the Board as of one hundred fourteen days before the date of such election, or by three thousand persons duly registered under section 1-1107, whichever is less. No signatures on such a petition may be counted which have been made on such petition more than one hundred fourteen days before the date of such election.

(2) Nominations under this subsection for candidates for election in a general election to any office referred to in paragraph (1) shall be of no force and effect with respect to any person whose name has appeared on the ballot of a primary election for that office held within eight months before the date of such general election.

(k) (1) In each general election for the office of member of the Council (other than the office of the Chairman or an at-large member) the Board shall arrange the ballots in each ward to enable a voter registered in that ward to vote for any one candidate who (A) has been duly elected by any political party in the next preceding primary election for such office from such ward, (B) has been duly nominated to fill a vacancy in such office in such ward pursuant to section 1-1110(d), or (C) has been nominated directly as a candidate for such office in such ward under subsection (j) of this section.

(2) In each general election for the office of Chairman and member of the Council at large, the Board shall arrange the ballots to enable a registered qualified elector to vote for as many candidates for election as members at large as there are members at large to be elected in such election, including the Chairman. Such candidates shall be only those persons who (A) have been duly elected by any political party in the next preceding primary election for such office, (B) have been duly nominated to fill vacancies in such office pursuant to section 1-1110(d), or (C) have been nominated directly as a candidate under subsection (j) of this section.

(3) In each general election for the office of Delegate and Mayor, the Board shall arrange the ballots to enable a registered qualified elector to vote for any one of the candidates for any such office who (A) has been duly elected by any political party in the

next preceding primary election for such office, (B) has been duly nominated to fill a vacancy in such office pursuant to section 1-1110(d), or (C) has been nominated directly as a candidate under subsection (j) of this section.

(m) (1) Designation of offices of local party committees to be filled by election pursuant to clause (4) of section 1-1101 shall be effected, in accordance with the provision of this subsection, by written communication signed by the chairman of such committee and filed with the Board not later than ninety days before the date of such election.

(2) Such designation shall specify separately (A) the titles of the offices and the total number of members to be elected at large, if any, and (B) the title of the offices and the total number of members to be elected by ward, if any.

(3) In the event that a party committee designates members to be elected by ward pursuant to clause (B) of paragraph (2) this subsection, the number of such officials to be elected from each of the wards shall be based on the relative numerical strength of such party in such ward, as compared with the total numerical strength of such party in the District, in each case as measured by the total number of registered voters of such party residing in each ward (as shown by the records of the Board as of one hundred twenty days before such election), based on the method known as the method of equal proportions, with no ward to elect less than one member.

(o) Each candidate in a general election for member of the Board of Education shall be nominated for such office by a nominating petition (A) filed with the Board not later than the sixtieth calendar day before the date of such general election; and (B) signed by at least two hundred qualified electors who are duly registered under section 1-1107, who reside in the ward from which the candidate seeks election, or in the case of a candidate running at large, signed by at least one thousand of the qualified electors in the District of Columbia registered under such section 1-1107. A nominating petition for a candidate in a general election for member of the Board of Education may not be circulated for signatures before the one hundred fourteenth day preceding the date of such election and may not be filed with the Board before the eighty-fifth day preceding such date. In a general election for members of the Board of Education, the Board shall arrange the ballot for each ward to enable a voter registered in that ward to vote for any one candidate duly nominated to be elected to such office from such ward, and to vote for as many candidates duly nominated for election at large to such office as there are Board of Education members to be elected at large in such election.

(p) (1) The Board is authorized to accept any nominating petition for a candidate for any office as bona fide with respect to the qualifications of the signatories thereto if the original or facsimile thereof has been posted in a suitable public place for the ten-day period beginning on the third day after the filing deadline for nominating petitions for such of-

fice. Any qualified elector may within such ten-day period challenge the validity of any petition by a written statement duly signed by the challenger and filed with the Board and specifying concisely the alleged defects in such petition. Copy of such challenge shall be sent by the Board promptly to the person designated for the purpose in the nominating petition.

(As amended Aug. 14, 1973, Pub. L. 93-92, § 1(8)-(14), 87 Stat. 312, 313; Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(3), 87 Stat. 833; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

AMENDMENTS

1974—Section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, amended subsecs. (d) and (i) by substituting "Board of Elections and Ethics" for "Board of Elections".

1973—Subsecs. (h)-(k). Section 751(3) of Act Dec. 24, 1973, Pub. L. 93-198, amended subsecs. (h)-(k) generally. For prior provisions, see the 1973 edition of the Code and Supp. I thereto.

Subsec. (a)(1). Section 1(8) of Act Aug. 14, 1973, Pub. L. 93-92, amended subsec. (a)(1) by eliminating clause (A) which read: "(A) prepared in accordance with rules prescribed by the Board,;" by redesignating clauses (B) and (C) as clauses (A) and (B); and by substituting "sixtieth" for "forty-fifth" in redesignated clause (B).

Subsec. (f). Section 1(9) of such Act amended subsec. (f) by substituting "1 per centum" for "5 per centum".

Subsec. (i). Section 1(10) of such Act amended subsec. (i) as follows: (A) by striking out "forty-fifth" and inserting in lieu thereof "sixtieth", (B) by striking out "ninety-ninth", "ninety-ninth", and "seventieth", respectively, and by inserting in lieu thereof "one hundred fourteenth", "one hundred fourteenth", and "eighty-fifth", respectively, and (C) by striking out "The Board may prescribe rules with respect to the preparation and presentation of nominating petitions."

Subsec. (j)(1). Section 1(11) of such Act amended subsec. (j)(1) as follows: (A) by striking out in clause (A) "forty-fifth", and inserting in lieu thereof "sixtieth", (B) by striking out "ninety-ninth", "ninety-ninth", and "seventieth", respectively, and by inserting in lieu thereof "one hundred fourteenth", "one hundred fourteenth", and "eighty-fifth", respectively, and (C) by striking out "The Board may prescribe rules with respect to the preparation and presentation of such nominating petitions."

Subsec. (m)(3). Section 1(12) of such Act amended subsec. (m)(3) by striking out "The Board shall by regulation specify such additional details as may be necessary and proper to effectuate the purpose of this subsection."

Subsec. (o). Section 1(13) of such Act amended subsec. (o) as follows: (A) by striking out in clause (A) "forty-fifth", and by inserting in lieu thereof "sixtieth", (B) by striking out "ninety-ninth" and "seventieth", respectively, and by inserting in lieu thereof "one hundred fourteenth" and "eighty-fifth", respectively, and (C) by striking out "The Board may prescribe rules with respect to the preparation and presentation of nominating petitions."

Subsec. (p)(1). Section 1(14) of such Act amended subsec. (p)(1) by striking out "forty-second day before the date of the election" and by inserting in lieu thereof "third day after the filing deadline for nominating petitions".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-198

Amendment effective May 7, 1974, see note under § 1-1101.

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92

See note under § 1-1102.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1105, 1-1109.

NOTES TO DECISIONS

Application for review

Application for review which appealed order of District of Columbia Board of Elections' determination that ward candidate's nominating petition challenged by elector satisfied code requirements and which was filed on Wednesday following receipt by the elector of the order on the preceding Saturday was not filed within three-day period prescribed by Congress for review of determinations of the board of elections and therefore the District of Columbia Court of Appeals was without jurisdiction. *G. C. Moore v. Board of Elections for the District of Columbia* (D.C. App. 1974, 325 A.2d 452).

Challenge

Written challenge, which was filed with the District of Columbia Board of Elections by the Board's executive secretary who did not present his challenge as a "qualified elector" and which challenged the validity of several nominating petitions for the office of at-large council member, was invalid because not filed by a "qualified elector." *C. L. Crawford v. Board of Elections for the District of Columbia* (D.C. App. 1974, 325 A.2d 451).

Presidential candidates

Statutory provisions for nominating candidates for presidential electors by executive committees of major parties or by petition signed by at least 5% of the voters are the exclusive means through which presidential and vice presidential candidates may have their names printed on the ballot, but do not restrict the right of citizens, by write-in votes, to vote for candidates for whom qualified electors have been appointed but whose names are not printed on the ballot. *L. R. Kamins v. Board of Elections for the District of Columbia* (D.C. App. 1974, 324 A.2d 187).

Standing

Alleged injuries to the public at large from the Board of Elections' refusal to check nominating petitions in the manner suggested by plaintiffs, the party political committee and its chairman, did not give plaintiffs standing to maintain action for preliminary injunction in absence of allegation of any injury in fact to plaintiffs. *Board of Elections for the District of Columbia et al. v. Democratic Central Committee et al.* (D.C. App. 1973, 300 A. 2d 725).

Validity of petition

The presence of some invalid signatures on nominating petition does not necessarily make a petition deficient if petition contains the required numbers of valid signatures. *Board of Elections for the District of Columbia et al. v. Democratic Central Committee et al.* (D.C. App. 1973, 300 A. 2d 725).

In view of statute setting forth duty of Board of Elections with respect to certification of nominating petitions and proper procedure to be utilized by an elector to challenge the validity of the petition, court would not attempt to judicially legislate a different procedure. *Id.*

Validity of signatures

In view of statutory provisions for determining validity of nominating petitions and for review of decisions of Board of Elections regarding challenges to such petitions, plaintiffs, the central committee of political party and its chairman, lacked standing to bring action for injunctive relief against board's refusal to check validity of signatures on nominating petitions in the manner desired by plaintiffs. *Board of Elections for the District of Columbia et al. v. Democratic Central Committee et al.* (D.C. App. 1973, 300 A. 2d 725).

§ 1-1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped and absent voters—Voting in party elections—Election of unopposed candidates—Availability of regulations.

(d) If the official in charge of the polling place, after hearing both parties to any such challenge or acting on his own initiative with respect to a prospective voter, reasonably believes the prospective voter is unqualified to vote, he shall allow the voter to cast a paper ballot marked "challenged", and shall

provide the prospective voter with written notification of his rights of appeal as provided in subsection (e) of this section. Ballots so cast shall be segregated, and no such ballot shall be counted until the challenge has been removed as provided in subsection (e).

(e) Within 3 days after the date of any election held under this chapter, any person who was permitted to vote in that election with a ballot marked "challenged" may petition the Board to have such designation removed and have such ballot counted in the same manner as all other ballots cast in that election. The Board shall hold a hearing with respect to such petition within seven days after receipt of such petition. At such hearing, the petitioner may appear and give testimony on the question of the challenge. The Board shall make a determination regarding the challenge within 2 days after the date of such hearing. Any aggrieved party may appeal the decision of the Board to the Superior Court of the District of Columbia within three days after the date of the Board's decision. The decision of the Court in any such case shall be final and not appealable.

(As amended Aug. 14, 1973, Pub. L. 93-92, § 1(15), 87 Stat. 313; Dec. 16, 1975, D.C. Law 1-37, § 2(6), (7), 22 DCR 3430.)

AMENDMENTS

1975—Subsec. (d). Section 2(6) of act Dec. 16, 1975, D.C. Law 1-37, inserted ", and shall provide the prospective voter with written notification of his rights of appeal as provided in subsection (e) of this section" at the end of the first sentence.

Subsec. (e). Section 2(7) of such act amended subsec. (e) generally.

1973—Subsec. (e). Section 1(15) of Act of Aug. 14, 1973, Pub. L. 93-92, amended subsec. (e) by substituting "ten" for "seven".

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92
See note under § 1-1102.

§ 1-1110. Dates for holding elections—Votes cast for President and Vice President to be counted as votes for presidential electors—Voting hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Filling vacancies on Board of Education.

(a) (1) The elections of the officials referred to in clause (1), (2), and (3) of section 1-1101, and of officials designated pursuant to clause (4) of such section, and the primary under section 1-1105(b) shall be held on the first Tuesday in May of each presidential election year.

(3) (A) Except as otherwise provided in the case of special elections under this chapter or section 206(a) of the District of Columbia Delegate Act, primary elections of each political party for the office of Delegate to the House of Representatives shall be held on the first Tuesday in May of each even-numbered year; and general elections for such office shall be held on the Tuesday next after the first Monday in November of each even-numbered year.

(B) Except as otherwise provided in the case of special elections under this chapter primary elections of each political party for the office of member of the Council shall be held on the first Tuesday after the

second Monday in September in 1974, and every second year thereafter, and general election for such offices shall be held on the first Tuesday after the first Monday in November in 1974 and every second year thereafter.

(C) Except as otherwise provided in the case of a special election under this chapter, primary elections of each political party for the office of Mayor and Chairman shall be held on the first Tuesday after the second Monday in September of every fourth year, commencing with calendar year 1974, and the general election for such office shall be held on the first Tuesday after the first Monday in November in 1974 and every fourth year thereafter.

(4) With respect to special elections required or authorized by this chapter, the Board may establish the dates on which such special elections are to be held and prescribe such other terms and conditions as may, in the Board's opinion, be necessary or appropriate for the conduct of such elections in a manner comparable to that prescribed for other elections held pursuant to this chapter.

(5) General elections for members of the Board of Education shall be held on the first Tuesday after the first Monday in November of each odd-numbered calendar year.

(6)-(9) Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(5), 87 Stat. 835.

(b) All elections prescribed by this chapter shall be conducted by the Board in conformity with the provisions of this chapter. In all elections held pursuant to this chapter the polls shall be open from 7 o'clock antemeridian to 8 o'clock postmeridian. Candidates receiving the highest number of votes in elections held pursuant to this chapter shall be declared the winners.

(c) In the case of a tie vote, the resolution of which will affect the outcome of any election, the candidates receiving the tie vote shall cast lots before the Board, at 12 o'clock noon on a date to be set by the Board, but not sooner than ten days following determination by the Board of the results of the election which require the resolution of such tie, and the one to whom the lot shall fall shall be declared the winner. If any candidate or candidates, receiving a tie vote, fail to appear before 12 o'clock noon on said day, the Board shall cast lots for him or them. For the purpose of casting lots any candidate may appear in person, or by proxy appointed in writing.

(d) In the event that any official, other than the Delegate, Mayor, member of the Council, member of the Board of Education, or a winner of a primary election for the office of Delegate, Mayor, or member of the Council, elected pursuant to this chapter dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this chapter to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of such term shall be chosen pursuant to the rules of the duly authorized party committee, except that such successor shall have the qualifications required by this chapter for such office. In the event that such a vacancy occurs in the office of a candidate for the office of Delegate, Mayor, or member of the Council who has been declared the winner

in the preceding primary election of such office, the vacancy may be filled not later than fifteen days prior to the next general election for such office, by nomination by the party committee of the party which nominated his predecessor. In the event that such a vacancy occurs in the office of Delegate more than eight months before the expiration of its term of office, the Board shall call special elections to fill such vacancy for the remainder of its term of office.

(e) Whenever a vacancy occurs in the office of member of the Board of Education, such vacancy shall be filled at the next general election which occurs more than one hundred fourteen days after such vacancy occurs. However, the Board of Education shall appoint a person to fill such vacancy until the unexpired term of the vacant office ends or until the fourth Monday in January next following the date of the election of a person to serve the remainder of such unexpired term, whichever occurs first. A person elected to fill a vacancy shall hold office for the duration of the unexpired term of office to which he was elected. Any person appointed under this subsection shall have the same qualifications for holding such office as were required of his immediate predecessor. (As amended Aug. 14, 1973, Pub. L. 93-92, § 1(16)-(19), 87 Stat. 313; Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(4)-(8), 87 Stat. 834, 835; Aug. 29, 1974, Pub. L. 93-395, § 3(a), 88 Stat. 794.)

REFERENCE IN TEXT

Section 206(a) of the District of Columbia Delegate Act, referred to in subsec. (a)(3)(A), is set out in the main edition as a note under § 1-291.

AMENDMENTS

1974—Subsec. (e). Section 2(a) of Act Aug. 29, 1974, Pub. L. 93-395, amended subsec. (e) by striking out "for members of the Board of Education" immediately following "election" in the first sentence.

1973—Subsec. (a)(3). Section 751(4) of Act Dec. 24, 1973, Pub. L. 93-198, amended subsec. (a)(3) by inserting "(A)" immediately before the word "Except", and by adding at the end thereof a new par. (B).

Subsec. (a)(4)-(9). Section 751(5) of such Act amended pars. (4) and (5) generally, and repealed pars. (6)-(9). For prior provisions, see the 1973 edition of the Code and Supp. I thereto.

Subsec. (b). Section 751(6) of such Act amended subsec. (b) by striking out "other than general elections for the Office of Delegate and for members of the Board of Education," immediately before "shall be declared the winners" at the end thereof.

Subsec. (c). Section 751(7) of such Act amended subsec. (c) by striking out "other than an election for members of the Board of Education" immediately after "the outcome of any election".

Subsec. (d). Section 751(8) of such Act amended subsec. (d) generally. For prior provisions, see the 1973 edition of the Code.

Subsec. (a)(1). Section 1(16) of Act Aug. 14, 1973, Pub. L. 93-92, amended subsec. (a)(1) by striking out "after the first Monday" immediately after the word "Tuesday".

Subsec. (a)(4). Section 1(17) of such Act amended subsec. (a)(4) generally to read as above set out. Prior to amendment, it read:

"(4) Runoff elections shall be held whenever (A) in any primary election of a political party for candidates for the office of Delegate, no one candidate receives at least 40 per centum of the total votes cast in that election for all candidates of that party for that office, and (B) in any general election for the office of Delegate, no one candidate receives at least 40 per centum of the total votes cast in that election for all candidates for that office. Any such runoff election shall be held not less than two weeks nor more than six weeks after the date on which the Board has determined the results of the

preceding primary or general election, as the case may be. At the time of announcing any such determination, the Board shall establish and announce the date on which the runoff election will be held, if one is required. The candidates in any such runoff election shall be the two persons who received, respectively, the two highest numbers of votes in such preceding primary or general election; except that if any person withdraws his candidacy from such runoff election (under the rules and within the time limits prescribed by the Board), the person who received the next highest number of votes in such preceding primary or general election and who is not already a candidate in the runoff election shall automatically become such a candidate."

Subsec. (b). Section 1(18) of such Act amended subsec. (b) by striking out "8 o'clock antemeridian" and by inserting in lieu thereof "7 o'clock antemeridian".

Subsec. (e). Section 1(19) of such Act amended subsec. (e) by striking out "ninety-nine" and inserting in lieu thereof "one hundred fourteen".

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-198

Amendment effective May 7, 1974, see note under § 1-1101.

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92

See note under § 1-1102.

REGULATIONS TO CARRY OUT 1974 AMENDMENT

Section 3(b) of Act Aug. 29, 1974, Pub. L. 93-395, as amended by Act Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458, provided: "The Board of Elections and Ethics shall prescribe regulations as it considers necessary in order to carry out the purposes of the amendment made by subsection (a) [amending § 1-1110(e)], including establishing the filing date for nomination petitions for any elections to be held during November 1974."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-171f, 1-1108, 31-101.

NOTES TO DECISIONS

Write-in votes

Statute providing that "Each vote cast for a candidate * * * whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors" of that candidate's party means that the Board of Elections need not count votes for candidates for whom no slate of electors has been filed but does not preclude counting write-in votes in favor of candidates for whom a slate of electors has been filed, despite contention that the names of such write-in candidates do not "appear" on the ballot. *L. R. Kamins v. Board of Elections for the District of Columbia* (D.C. App. 1974, 324 A. 2d 187).

There is nothing in statute regulating elections in the District of Columbia which precluded the counting of write-in and sticker votes in a presidential election where such votes were cast for candidates for whom a valid slate of elections had been filed, and such votes should have been counted. *Id.*

§ 1-1111. Petition for recount by candidate—Procedure—Expenses—Petition for recount by voter to District of Columbia Court of Appeals—Grounds for voiding election.

(a) If, within seven days after the Board certifies the results of an election, any qualified candidate at such election petitions the Board to have the votes cast at such election recounted in one or more voting precincts, the Board shall order such recount. In each such case, the petitioner shall deposit a fee of \$20 for each precinct petitioned to be recounted. If the cost of the recount is less than \$20 per precinct, the difference shall be refunded. If the result of the election is changed as a result of the recount, the entire amount deposited by the petitioner shall be refunded. In no case, however, shall the petitioner be required to pay the cost of any recount in any such election if the difference in the number of votes

received by the petitioner in connection with any office and the number of votes received by the person certified as having been elected to that office, in the case of an election from a ward, is less than 1 per centum or fifty votes, whichever is less, or in the case of an election at large, is less than 1 per centum or three hundred and fifty votes, whichever is less.

* * * * *

(As amended Aug. 14, 1973, Pub. L. 93-92, § 1(20), 87 Stat. 313.)

AMENDMENT

1973—Subsec. (a). Section 1(20) of Act Aug. 14, 1973, Pub. L. 93-92, amended subsec. (a) by striking out "Such recounts shall be conducted in the manner prescribed by the Board by regulation."

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92

See note under § 1-1102.

NOTES TO DECISIONS

Judicial review

Unsworn allegations in petition that winning candidate in primary for particular ward made unfair and illegal use of certain facilities of a nonprofit organization, including the use of mailing privileges of a church and the use of nursery van of the church in connection with mobile campaigning and that the Board of Elections should have removed the name or indicated the withdrawal of a particular person as a candidate was not sufficient to enable court to utilize its review powers over the election procedure. *J. K. Morgan v. R. E. Martin, Chairman, etc.* (D.C. App. 1974, 327 A. 2d 827).

Voiding of election

Even though it was a matter of common knowledge that there had been problems with election machinery in primary election, unsworn allegations that the election procedures in one ward constituted an election fiasco, that some ballot boxes could have been altered or misplaced, that ballots were mixed together, that the computerized results were a fiasco, that supervision was lacking, that a voting circular violated fair campaign practices, and that one precinct was located in a physically inadequate room were insufficient to warrant voiding of the election in the ward or to warrant the institution by the court of an ad hoc fact finding process. *J. K. Morgan v. R. E. Martin, Chairman, etc.* (D.C. App. 1974, 327 A. 2d 827).

Where Board of Elections submitted sworn statements that no ballots were lost or destroyed and that all valid ballots were counted, petition which alleged that candidate for Council in the ward was present at recount which decided winning candidate but was not present during the entire duration of a previous recount, and that Board of Elections failed to assure that program and equipment to count the votes by machine were in working order, failed to maintain adequate security of the ballots, erroneously held recounts, and failed to notify candidate of the first recount did not warrant setting aside the certified results of the election. *Id.*

§ 1-1113. Appropriations.

There are hereby authorized to be appropriated, out of any money in the Treasury to the credit of the District of Columbia not otherwise appropriated, such sums as are necessary to carry out the purposes of this chapter. (As amended Aug. 14, 1974, Pub. L. 93-376, title VII, § 706(a), 88 Stat. 471.)

AMENDMENT

1974—Section 706(a) of Act Aug. 14, 1974, Pub. L. 93-376, amended section generally. For prior provisions, see the 1973 ed. of the Code.

CONSTRUCTION OF 1974 AMENDMENT

Section 706(c) of Act Aug. 14, 1974, Pub. L. 93-376, provided: "The amendment [to this section] made by subsection (a) shall not affect the liability of any person arising out of any violation of section 13 of the District of Columbia Election Act [this section] committed before

the date of enactment of this title, and any action commenced with respect to such a violation shall not abate."

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective Aug. 14, 1974, see section 705(b) of Act Aug. 14, 1974, Pub. L. 93-376, set out as a note under § 1-1121.

REIMBURSABLE APPROPRIATIONS

Section 722 of title VII of the District of Columbia Self-Government and Governmental Reorganization Act [approved Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 821] provided:

"(a) The Secretary of the Treasury is authorized to advance to the District of Columbia the sum of \$750,000, out of any money in the Treasury not otherwise appropriated, for use (1) in paying the expenses of the Board of Elections (including compensation of the members thereof), and (2) in otherwise carrying into effect the provisions of this Act.

"(b) The full amount expended out of the money advanced pursuant to this section shall be reimbursed to the United States, without interest, during the second fiscal year which begins after the effective date of title IV [Jan. 2, 1975], from the general fund of the District."

§ 1-1114. False registration, fraud, and other corrupt practices in elections—Penalties.

Any person who shall register, or attempt to register, under the provisions of this chapter and make any false representations as to his qualifications for voting or for holding elective office, or be guilty of violating section 1-1109, 1-1112, or 1-1113, or be guilty of bribery or intimidation of any voter at the elections herein provided for, or, being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in such elections, or attempt to vote in an election held by a political party other than that to which he has declared himself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this chapter knowingly, make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of this chapter, shall upon conviction thereof be fined not more than \$10,000 or be imprisoned not more than five years, or both. The provisions of this section shall be supplemental to and not in derogation of any penalties under other laws of the District of Columbia. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87-389, § 1(24); Sept. 22, 1970, Pub. L. 91-405, title II, § 205(k), 84 Stat. 854; Dec. 16, 1975, D.C. Law 1-37, § 2(8), 22 DCR 3430.)

AMENDMENT

1975—Section 2(8) of act Dec. 16, 1975, D.C. Law 1-37, substituted "\$10,000" and "five years" for "\$500" and "ninety days", respectively.

SEPARABILITY

Section 3 of act Dec. 16, 1975, D.C. Law 1-37, provided: "If any provision of this act, including any amendment [to §§ 1-1105, 1-1107, 1-1109, 1-1114] made by this act, is found to be unconstitutional or otherwise contrary to law, the remaining provisions of this act, including such amendments, shall not be affected thereby."

§ 1-1115. Candidacy for more than one office not permitted—Choice of nominations—Withdrawal from multiple nominations—Candidacy of officeholder for other office restricted.

(a) No person shall be a candidate for more than one office on the Board of Education or the Council in any election for members of the Board of Educa-

tion or Council, and no person shall be a candidate for more than one office on the Council in any primary election. If a person is nominated for more than one such office, he shall, within three days after the Board has sent him notice that he has been so nominated, designate in writing the office for which he wishes to run, in which case he will be deemed to have withdrawn all other nominations. In the event that such person fails within such three-day period to file such a designation with the Board, all such nominations of such person shall be deemed withdrawn.

(b) No person who is holding the office of Mayor, Delegate, Chairman or member of the Council, or member of the School Board shall, while holding such office, be eligible as a candidate for any other of such offices in any primary or general election, unless the term of the office which he so holds expires on or prior to the date on which he would be eligible, if elected in such primary or general election, to take the office with respect to which such election is held. (Aug. 12, 1955, ch. 862, § 15, as added Apr. 22, 1968, Pub. L. 90-292, § 4(9), 82 Stat. 106, and amended Dec. 24, 1973, Pub. L. 93-198, title VII, § 751(9), (10), 87 Stat. 835.)

AMENDMENT

1973—Section 751(9), (10) of Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence by inserting reference to the Council and by providing that no person shall be a candidate for more than one office on the Council in any primary election; designated the existing text as subsec. (a); and added subsec. (b).

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment effective May 7, 1974, see note under § 1-1101.

Chapter 11A.—ELECTION CAMPAIGNS—LOBBYING—CONFLICT OF INTEREST

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SUBCHAPTER II.—FINANCIAL DISCLOSURES

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SUBCHAPTER VI.—CONFLICT OF INTEREST AND DISCLOSURE

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SUBCHAPTER I.—GENERAL PROVISIONS

§ 1-1121. Definitions.

When used in this chapter, unless otherwise provided—

(a) The term "election" means a primary, runoff, general, or special election held in the District of Columbia for the purpose of nominating an individual to be a candidate for election to office or for the purpose of electing a candidate to office, and includes a convention or caucus of a political party held for the purpose of nominating such a candidate.

(b) The term "candidate" means an individual who seeks nomination for election, or election, to office, whether or not such individual is nominated or elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if he has (1) obtained or authorized any other person to obtain nominating petitions to qualify himself for nomination for election, or election, to office, (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to office, or (3) reason to know, or knows, that any other person has received contributions or made expenditures for that purpose, and has not notified that person in writing to cease receiving contributions or making expenditures for that purpose. A person who is deemed to be a candidate for the purposes of this chapter shall not be deemed, solely by reason of that status, to be a candidate for the purposes of any other Federal law.

(c) The term "office" means the office of Mayor of the District of Columbia, Chairman or member of the Council of the District of Columbia, member of the Board of Education of the District of Columbia, or an official of a political party.

(d) The term "official of a political party" means—

(1) national committeemen and national committeewomen;

(2) delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States;

(3) alternates to the officials referred to in clauses (1) and (2) above, where permitted by political party rules; and

(4) such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election, by public ballot, at large or by ward in the District of Columbia.

(e) The term "political committee" means any committee (including a principal campaign committee), club, association, organization, or other group of individuals organized for the purpose of, or engaged in, promoting or opposing a political party or the nomination or election of an individual to office.

(f) The term "contribution" means—

(1) a gift, subscription (including any assessment, fee, or membership dues), loan, advance, or deposit of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee;

(2) a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;

(3) a transfer of funds between political committees; or

(4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or committee without charge, or for less than reasonable value, for any such purpose or the furnishing of goods, advertising, or services to a candidate's campaign without charge, or at a rate which is less than the rate normally charged for such services.

Notwithstanding the foregoing, such term shall not be construed to include (A) services provided without compensation, by individuals volunteering a portion or all of their time on behalf of a candidate or political committee, (B) personal services provided without compensation by individuals volunteering a portion or all of their time to a candidate or political committee, (C) communications by an organization, other than a political party, solely to its members and their families on any subject, (D) communications (including advertisements) to any person on any subject by any organization which is organized solely as an issue-oriented organization, which communications neither endorse nor oppose any candidate for office, or (E) normal billing credit for a period not exceeding thirty days.

(g) The term "expenditure" means—

(1) a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of financing, directly or indirectly, the election campaign of a candidate or any operations of a political committee;

(2) a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure;

(3) a transfer of funds between political committees; and

(4) notwithstanding the foregoing provisions of this paragraph, such term shall not be construed to include the incidental expenses (as defined by the Board) made by or on behalf of individuals in

the course of volunteering their time on behalf of a candidate or political committee.

(h) The term "person" means an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons.

(i) The term "Director" means the Director of Campaign Finance of the District of Columbia Board of Elections and Ethics created by subchapter III of this chapter.

(j) The term "political party" means an association, committee, or organization which nominates a candidate for election to any office and qualifies under chapter 11 of this title, to have the names of its nominees appear on the election ballot as the candidate of that association, committee, or organization.

(k) The term "Board" means the District of Columbia Board of Elections and Ethics established under chapter 11 of this title and redesignated by section 1-1156 of this title. (Aug. 14, 1974, Pub. L. 93-376, title I, § 102, 88 Stat. 447.)

SHORT TITLE

Section 101 of Act Aug. 14, 1974, Pub. L. 93-376, title I, 88 Stat. 447, provided: "This Act [enacting this chapter, provisions set out under this section, and § 47-1567f; and amending §§ 1-1102, 1-1103, 1-1104, 1-1108, and 1-1113] may be cited as the 'District of Columbia Campaign Finance Reform and Conflict of Interest Act'."

EFFECTIVE DATES

Section 705 of Act Aug. 14, 1974, Pub. L. 93-376, provided:

"(a) Titles II and IV of this Act [subchapter II and IV of this chapter] shall take effect on the date of enactment of this Act, except the first report or statement required to be filed by any individual or political committee under the provisions of such titles shall include that information required under section 13(e) of the District of Columbia Election Act (D.C. Code, sec. 1-1113(e)) with respect to contributions and expenditures made before the date of enactment of this Act, but after January 1, 1974.

"(b) Titles I, III, VI and VII of this Act [subchapter I, III, VI and VII of this chapter, provisions set out under this section, section 47-1567f, and amendments of sections 1-1102, 1-1103, 1-1104, 1-1108, 1-1113] shall take effect on the date of enactment of this Act.

"(c) Title V of this Act [subchapter V of this chapter] shall take effect January 2, 1975."

AUTHORIZATION OF APPROPRIATIONS

Section 708 of Act Aug. 14, 1974, Pub. L. 93-376, provided: "Amounts authorized under section 722 of the District of Columbia Self-Government and Governmental Reorganization Act may be used to carry out the purposes of this Act [this chapter]."

STUDY OF 1974 ELECTION AND REPORT BY COUNCIL

Section 704 of Act Aug. 14, 1974, Pub. L. 93-376, provided:

"(a) The Council of the District of Columbia shall, during calendar year 1975, conduct public hearings and other appropriate investigations on (1) the operation and effect of the District of Columbia Campaign Finance Reform Act [this chapter] and the District of Columbia Election Act [chapter 11 of this title] on the elections held in the District of Columbia during 1974; and (2) the necessity and desirability of modifying either or both of those Acts so as to improve electoral machinery and to insure open, fair, and effective election campaigns in the District of Columbia.

"(b) Upon the conclusion of its hearings and investigations the Council shall issue a public report on its findings and recommendations. Nothing in this section shall be construed as limiting the legislative authority

over elections in the District of Columbia vested in the Council by the District of Columbia Self-Government and Governmental Reorganization Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1105.

NOTES TO DECISIONS

Constitutionality—Determination by Board of Elections

Even though the constitutional questions regarding challenge of the Socialist Workers' party to the provisions of this chapter based on ground that the application of the provisions to it would subject members whose names must be disclosed to harassment must be ruled on directly, it was within three-judge district court's power to direct the Board of Elections and Ethics to provide a suitable forum for plaintiffs' claims and, should the claims be proved, to provide an appropriate remedy. *J. Doe et ano. v. R. Martin, Chairman, et al.* (1975, 404 F.Supp. 753).

— General

Campaign contribution disclosure statute [this chapter] serves too important an interest to subject it to excisions on allegations of a subjective "chill" based on real or perceived controversial character of candidate; such allegations are not an adequate substitute for claim of specific present objective harm. *J. Doe et ano. v. R. Martin, Chairman, et al.* (1975, 404 F.Supp. 753).

— Proper party to challenge

Socialist Workers' party could properly assert claim regarding fear of harassment and reprisal to members of party by campaign contribution disclosure law [this chapter] on behalf of its members since to require that party members assert the claim would result in nullification of right at very moment of its assertion. *J. Doe et ano v. R. Martin, Chairman, et al.* (1975, 404 F.Supp. 753).

SUBCHAPTER II.—FINANCIAL DISCLOSURES

§ 1-1131. Organization of political committees.

(a) Every political committee shall have a chairman and a treasurer. No contribution and no expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of treasurer thereof and no other person has been designated and has agreed to perform the functions of treasurer. No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.

(b) Every person who receives a contribution of \$10 or more for or on behalf of a political committee shall, on demand of the treasurer, and in any event within five days after receipt of such contribution, submit to the treasurer of such committee a detailed account thereof, including the amount, the name and address (including the occupation and the principal place of business, if any) of the person making such contribution, and the date on which such contribution was received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(c) Except for accounts of expenditures made out of the petty cash fund provided for under section 1-1131(b),¹ the treasurer of a political committee, and each candidate, shall keep a detailed and exact account of—

(1) all contributions made to or for such political committee or candidate;

¹ So in original. Probably should be section "1-1133(b)".

(2) the full name and mailing address (including the occupation and the principal place of business, if any) of every person making a contribution of \$10 or more, and the date and amount thereof;

(3) all expenditures made by or on behalf of such committee or candidate; and

(4) the full name and mailing address (including the occupation and the principal place of business if any) of every person to whom any expenditure is made, the date and amount thereof and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.

(d) The treasurer or candidate shall obtain and preserve such receipted bills and records as may be required by the Board.

(e) Each political committee and candidate shall include on the face or front page of all literature and advertisement soliciting funds the following notice: "A copy of our report is filed with the Director of Campaign Finance of the District of Columbia Board of Elections and Ethics." (Aug. 14, 1974, Pub. L. 93-376, title II, § 201, 88 Stat. 449.)

EFFECTIVE DATE OF SUBCHAPTER

See note under § 1-1121.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1139.

NOTES TO DECISIONS

Disclosure of records

Requirement of statute regarding the keeping of records for each contribution of \$10 or more to political party has an implicit provision against disclosure of those records except for that which is inextricably and unavoidably involved in the process of verification and audit. *J. Doe et ano. v. R. Martin, Chairman, et al.* (1975, 404 F. Supp. 753).

§ 1-1132. Principal campaign committee.

(a) Each candidate for office shall designate in writing one political committee as his principal campaign committee. The principal campaign committee shall receive all reports made by any other political committee accepting contributions or making expenditures for the purpose of influencing the nomination for election, or election, of the candidate who designated it as his principal campaign committee. The principal committee may require additional reports to be made to it by any such political committee and may designate the time and number of all reports. No political committee may be designated as the principal campaign committee of more than one candidate, except a principal campaign committee supporting the nomination or election of a candidate as an official of a political party may support the nomination or election of more than one such candidate, but may not support the nomination or election of a candidate for any public office.

(b) Each statement (including the statement of organization required under section 1-1134) or report that a political committee is required to file with or furnish to the Director under the provisions of this chapter shall also be furnished, if that political committee is not a principal campaign committee, to the campaign committee for the candidate on whose behalf that political committee is accepting or making, or intends to accept or make, contributions or expenditures.

(c) The treasurer of each political committee which is a principal campaign committee, and each candidate, shall receive all reports and statements filed with or furnished to it or him by other political committees, consolidate, and furnish the reports and statements to the Director, together with the reports and statements of the principal campaign committee of which he is treasurer or which was designated by him, in accordance with the provisions of this title and regulations prescribed by the Board. (Aug. 14, 1974, Pub. L. 93-376, title II, § 202, 88 Stat. 450.)

§ 1-1133. Designation of campaign depository.

(a) Each political committee, and each candidate accepting contributions or making expenditures, shall designate, in the registration statement required under section 1-1134 or 1-1135, one national bank located in the District of Columbia as the campaign depository of that political committee or candidate. Each such committee or candidate shall maintain a checking account at such depository and shall deposit any contributions received by the committee or candidate into that account. No expenditures may be made by such committee or candidate except by check drawn payable to the person to whom the expenditure is being made on that account, other than petty cash expenditures as provided in subsection (b).

(b) A political committee or candidate may maintain a petty cash fund out of which may be made expenditures not in excess of \$50 to any person in connection with a single purchase or transaction. A record of petty cash receipts and disbursements shall be kept in accordance with requirements established by the Board and such statements and reports thereof shall be furnished to the Director as it may require. Payments may be made into the petty cash fund only by check drawn on the checking account maintained at the campaign depository of such political committee or candidate. (Aug. 14, 1974, Pub. L. 93-376, title II, § 203, 88 Stat. 451.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1131.

§ 1-1134. Registration of political committees—Statements.

(a) Each political committee shall file with the Director a statement of organization within ten days after its organization. Each such committee in existence on August 14, 1974, shall file a statement of organization with the Director at such time as the Director may prescribe.¹

(b) The statement of organization shall include—

(1) the name and address of the political committee;

(2) the names, addresses, and relationships of affiliated or connected organizations;

(3) the area, scope, or jurisdiction of the political committee;

(4) the name, address, and position of the custodian of books and accounts;

(5) the name, address, and position of other principal officers, including officers and members of the finance committee, if any;

¹ So in original. Probably a period should follow the word "prescribe".

(6) the name, address, office sought, and party affiliation of (A) each candidate whom the committee is supporting, and (B) any other individual, if any, whom the committee is supporting for nomination for election or election, to any public office whatever; or, if the committee is supporting the entire ticket of any party, the name of the party;

(7) a statement whether the political committee is a continuing one;

(8) the disposition of residual funds which will be made in the event of dissolution;

(9) the name and address of the bank designated by the committee as the campaign depository, together with the title and number of each account and safety deposit box used by that committee at the depository, and the identification of each individual authorized to make withdrawals or payments out of each such account or box; and

(10) such other information as shall be required by the Director.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Director within the ten-day period following the change.

(d) Any political committee which, after having filed one or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year shall so notify the Director. (Aug. 14, 1974, Pub. L. 93-376, title II, § 204, 88 Stat. 451.)

CODIFICATION

In subsec. (a), the words "on August 14, 1974" were substituted for "at the date of enactment of this Act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1132, 1-1133.

§ 1-1135. Registration of candidates.

(a) Each individual shall, within five days of becoming a candidate, or within five days of the day on which he, or any person authorized by him (pursuant to section 1-1161(d)) to do so, has received a contribution or made an expenditure in connection with his campaign or for the purposes of preparing to undertake his campaign, file with the Director a registration statement in such form as the Director may prescribe.

(b) In addition, candidates shall provide the Director the name and address of the campaign depository designated by that candidate, together with the title and number of each account and safety deposit box used by that candidate at the depository, and the identification of each individual authorized to make withdrawals or payments out of such account or box, and such other information as shall be required by the Director. (Aug. 14, 1974, Pub. L. 93-376, title II, § 205, 88 Stat. 452.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1133, 1-1139.

§ 1-1136. Reports by political committees and candidates.

(a) The treasurer of each political committee supporting a candidate, and each candidate, required to register under this chapter, shall file with the Director, and with the applicable principal campaign committee, reports of receipts and expenditures on forms to be prescribed or approved by the

Director. Except for the first such report which shall be filed on the twenty-first day after August 14, 1974, such reports shall be filed on the 10th day of March, June, August, October, and December in each year during which there is held an election for the office such candidate is seeking, and on the fifteenth and fifth days next preceding the date on which such election is held, and also by the 31st day of January of each year. In addition such reports shall be filed on the 31st day of July of each year in which there is no such election. Such reports shall be complete as of such date as the Director may prescribe, which shall not be more than five days before the date of filing, except that any contribution of \$200 or more received after the closing date prescribed by the Director for the last report required to be filed prior to the election shall be reported within twenty-four hours after its receipt.

(b) Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name and mailing address (including the occupation and the principal place of business, if any) of each person who has made one or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggregate amount or value in excess of \$50 or more, together with the amount and date of such contributions;

(3) the total sum of individual contributions made to or for such committee or candidate during the reporting period and not reported under paragraph (2);

(4) the name and address of each political committee or candidate from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers;

(5) each loan to or from any person within the calendar year in an aggregate amount or values of \$50 or more, together with the full names and mailing addresses (including the occupation and the principal place of business, if any) of the lender and endorsers, if any, and the date and amount of such loans;

(6) the net amount of proceeds from (A) the sale of tickets to each dinner, luncheon, rally, and other fundraising events organized by such committee; (B) mass collections made at such events; and (C) sales by such committee of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(7) each contribution, rebate, refund, or other receipt of \$50 or more not otherwise listed under paragraphs (2) through (6);

(8) the total sum of all receipts by or for such committee or candidate during the reporting period;

(9) the full name and mailing address (including the occupation and the principal place of business, if any) of each person to whom expenditures have been made by such committee or on

behalf of such committee or candidate within the calendar year in an aggregate amount or value of \$10 or more, the amount, date, and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made;

(10) the total sum of expenditures made by such committee or candidate during the calendar year;

(11) the amount and nature of debts and obligations owed by or to the committee, in such form as the Director may prescribe and a continuous reporting of its debts and obligations after the election at such periods as the Director may require until such debts and obligations are extinguished; and

(12) such other information as may be required by the Director.

(c) The reports to be filed under subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the unchanged amount need be carried forward. If no contributions or expenditures have been accepted or expended during a calendar year, the treasurer of the political committee or candidate shall file a statement to that effect.

(d) Each treasurer of a political committee, each candidate for election to office, and each treasurer appointed by a candidate, shall file with the Director weekly reports of cash contributions on forms to be prescribed or approved by the Director. (Aug. 14, 1974, Pub. L. 93-376, title II, § 206, 88 Stat. 452.)

CODIFICATION

In subsec. (a), "August 14, 1974" was substituted for "the date of enactment of this Act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1137, 1-1181.

NOTES TO DECISIONS

Disclosure of records

Requirement of statute regarding the keeping of records for each contribution of \$10 or more to political party has an implicit provision against disclosure of those records except for that which is inextricably and unavoidably involved in the process of verification and audit. *J. Doe et ano. v. R. Martin, Chairman, et al.* (1975, 404 F. Supp. 753).

§ 1-1137. Reports by others than political committees.

Every person (other than a political committee or candidate) who makes contributions or expenditures, other than by contribution to a political committee or candidate, in an aggregate amount of \$50 or more within a calendar year shall file with the Director a statement containing the information required by section 1-1136. Statements required by this section shall be filed on the dates on which reports by political committees are filed, but need not be cumulative. (Aug. 14, 1974, Pub. L. 93-376, title II, § 207, 88 Stat. 453.)

§ 1-1138. Formal requirements respecting reports and statements.

(a) A report or statement required by this subchapter to be filed by a treasurer of a political committee, a candidate, or by any other person, shall be verified by the oath or affirmation of the person

filing such report or statement, taken before any officer authorized to administer oaths.

(b) A copy of a report or statement shall be preserved by the person filing it for a period to be designated by the Board in a published regulation.

(c) The Board, shall, by published regulations of general applicability, prescribe the manner in which contributions and expenditures in the nature of debts and other contracts, agreements, and promises to make contributions or expenditures shall be reported. Such regulations shall provide that they be reported in separate schedules. In determining aggregate amounts of contributions and expenditures, amounts reported as provided in such regulations shall not be considered until actual payment is made. (Aug. 14, 1974, Pub. L. 93-376, title II, § 208, 88 Stat. 454.)

§ 1-1139. Exemption for candidates who anticipate spending less than \$250.

Except for the provisions of subsections (c) and (d) of section 1-1131, and subsection (a) of section 1-1135, the provisions of this title shall not apply to any candidate who anticipates spending or spends less than \$250 in any one election and who has not designated a principal campaign committee. On the fifteenth day prior to the date of the election in which such candidate is entered, and on the thirtieth day after the date of such election, such candidate shall certify to the Director that he has not spent more than \$250 in such election. (Aug. 14, 1974, Pub. L. 93-376, title II, § 209, 88 Stat. 454.)

§ 1-1140. Identification of campaign literature.

All newspaper or magazine advertising, posters, circulars, billboards, handbills, bumper stickers, sample ballots, and other printed matter with reference to or intended for the support or defeat of a candidate or group of candidates for nomination or election to any public office shall be identified by the words "paid for by" followed by the name and address of the payer or the committee or other person and its treasurer on whose behalf the material appears. (Aug. 14, 1974, Pub. L. 93-376, title II, § 210, 88 Stat. 454.)

§ 1-1141. Effect on liability.

Nothing in this subchapter shall be construed as creating or limiting in any way the liability of any person under existing law for any financial obligation incurred by a political committee or candidate. (Aug. 14, 1974, Pub. L. 93-376, title II, § 211, 88 Stat. 454.)

SUBCHAPTER III.—DIRECTOR OF CAMPAIGN FINANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1-1121.

§ 1-1151. Establishment of the office of Director.

(a) There is established within the District of Columbia Board of Elections and Ethics the office of Director of Campaign Finance (hereinafter in this chapter referred to as the "Director"). The Commissioner of the District of Columbia shall appoint, by and with the advice and consent of the Senate, the Director, except that on and after January 2, 1975, appointments to the Office of Director, in-

cluding vacancies therein, shall be made by the Mayor, with the advice and consent of the Council. The Director shall serve for a term of four years, subject to removal for cause by the Commissioner or the Mayor, as the case may be, and may be reappointed for a like term or terms, with the advice and consent of the Council, except that in the case of the Director serving as such on January 1, 1975, such Director's term shall terminate upon the expiration of June 1, 1979, unless sooner so removed for cause. Any appointment to fill a vacancy in the Office of Director shall be for the unexpired portion of the term. Such appointments shall be made without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service. The Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for grade 16 of the General Schedule in section 5332 of title 5 of the United States Code, and shall be responsible for the administrative operations of the Board pertaining to this chapter and shall perform such other duties as may be delegated or assigned to him from time to time by regulations or orders of the Board. However, the Board shall not delegate to the Director the making of regulations regarding elections.

(b) The Board may appoint a General Counsel without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service, to serve at the pleasure of the Board. The General Counsel shall be entitled to receive compensation at the same rate as the Director of the Board and shall be responsible solely to the Board. The General Counsel shall perform such duties as may be delegated or assigned to him from time to time by regulation or order of the Board.

(c) In any appropriate case where the Board upon its own motion or upon recommendation of the Director makes a finding of an apparent violation of this chapter, it shall refer such case to the United States Attorney for the District of Columbia for prosecution, and shall make public the fact of such referral and the basis for such finding. In addition, the Board, through its General Counsel, shall initiate, maintain, defend, or appeal any civil action (in the name of the Board) relating to the enforcement of the provisions of this chapter. The Board may, through its General Counsel, petition the courts of the District of Columbia for declaratory or injunctive relief concerning any action covered by the provisions of this chapter. (Aug. 14, 1974, Pub. L. 93-376, title III, § 301, 88 Stat. 454; Jan. 3, 1975, Pub. L. 93-635, § 12, 88 Stat. 2177.)

AMENDMENT

1975—Section 12 of Act Jan. 3, 1975, Pub. L. 93-635, amended the second sentence of subsec. (a) by striking out "any vacancy in the office of Director shall be filled by appointment by the Mayor" and inserting in lieu thereof "appointments to the Office of Director, including vacancies therein, shall be made by the Mayor"; and amended subsec. (a) further by inserting after the second sentence two new sentences relating to the term of office of the Director.

EFFECTIVE DATE OF SUBCHAPTER

See note under § 1-1121.

§ 1-1152. Powers of the Director.

(a) The Director, under regulations of general applicability approved by the Board, shall have the power—

(1) to require any person to submit in writing such reports and answers to questions as the Director may prescribe relating to the administration and enforcement of this chapter; and such submission shall be made within such reasonable period and under oath or otherwise as the Director may determine;

(2) to administer oaths;

(3) to require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties;

(4) in any proceeding or investigation to order testimony to be taken by deposition before any person who is designated by the Director and has the power to administer oaths and, in such instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (3) of this subsection;

(5) to pay witnesses the same fees and mileage as are paid in like circumstances in the Superior Court of the District of Columbia; and

(6) to accept gifts and voluntary and uncompensated services.

Subpenas issued under this section shall be issued by the Director upon the approval of the Board.

(b) The Superior Court of the District of Columbia may, upon petition by the Board, in case of refusal to obey a subpoena or order of the Board issued under subsection (a) of this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof. (Aug. 14, 1974, Pub. L. 93-376, title III, § 302, 88 Stat. 455.)

§ 1-1153. Duties of the Director.

The Director shall—

(1) develop and furnish (upon request) prescribed forms for the making of the reports and statements required to be filed with him under this chapter;

(2) develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter;

(3) make the reports and statements filed with him available for public inspection and copying, commencing as soon as practicable but not later than the end of the second day following the day during which it was received, and to permit and facilitate copying of any such report or statement by hand and by duplicating machine, as requested by any person, at reasonable cost to such person, except any information copied from such reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(4) preserve such reports and statements for a period of ten years from date of receipt;

(5) compile and maintain a current list of all statements or parts of statements on file pertaining to each candidate;

(6) prepare and publish such other reports as he may deem appropriate;

(7) assure dissemination of statistics, summaries, and reports prepared under this subchapter;

(8) make from time to time audits and field investigations with respect to reports and statements filed under the provisions of this subchapter, and with respect to alleged failures to file any report or statement required under the provisions of this subchapter; and

(9) perform such other duties as the Board may require.

(Aug. 14, 1974, Pub. L. 93-376, title III, § 303, 88 Stat. 456.)

§ 1-1154. General Accounting Office to assist Board and Director.

The Board and Director may, in the performance of its functions under this chapter, request the assistance of the Comptroller General of the United States, including such investigations and audits as the Board and Director may determine necessary, and the Comptroller General shall provide such assistance with or without reimbursement, as the Board and Director and the Comptroller General shall agree. (Aug. 14, 1974, Pub. L. 93-376, title III, § 304, 88 Stat. 456.)

§ 1-1155. Nominating committee.

(a) Effective January 2, 1975, there is established within the Government of the District of Columbia a committee to be known as the "District of Columbia Board of Elections and Ethics Nominating Committee" (hereinafter in this chapter referred to as the "Committee"). The Committee shall have the function of nominating individuals for appointment as members of the District of Columbia Board of Elections and Ethics for any and all vacancies occurring on such Board on or after the date on which a majority of the members first appointed pursuant to this section hold their first meeting as members of the Committee. Such nominations shall be made by the Committee in accordance with the provisions of this section. The Committee shall consist of five members. Within ten days following the date on which a majority of the members are first appointed pursuant to this section, such members so appointed shall hold their first meeting as members of the Committee.

(b)(1) Two members of the Committee shall be appointed by the Mayor, at least one of whom shall be a lawyer.

(2) Three members of the Committee shall be appointed by the Chairman of the Council of the District of Columbia, with the approval of the Council.

(c) Members of the Committee shall serve for terms of five years, except that of the members first appointed pursuant to subsection (b)(1), one shall serve for one year and one for five years, as designated at the time of appointment, and members appointed pursuant to subsection (b)(2), one shall serve for two years, one for three years, and one for four years, as designated at the time of appointment.

(d)(1) No individual may be appointed as a member of the Committee unless he or she—

(A) is a citizen of the United States, and

(B) is a resident of the District of Columbia and has maintained his or her domicile within the District for at least one year immediately preceding the date of his or her appointment, and

(C) is not a member of the Council of the District of Columbia or an officer or employee of the Government of the District of Columbia (including the judicial branch).

(2) Any vacancy in the membership of the Committee shall be filled in the same manner in which the original appointment was made. Any individual appointed to fill a vacancy, occurring other than upon the expiration of a term, shall serve only for the remainder of the term of such individual's predecessor.

(e) Members of the Committee shall be paid for each day spent performing their duties as members of the Committee at a rate which is equal to the daily equivalent of the rate provided by step 1 of grade 17 of the General Schedule under section 5332 of title 5, United States Code.

(f)(1) Except as otherwise provided in subsection (a) of this section, the Committee shall act only at meetings called by the Chairman or a majority of the members thereof and only after notice has been given of such meeting to all members of the Committee.

(2) The Committee shall choose annually from among its members a Chairman and such other officers as it deems necessary. The Committee may adopt such rules of procedure as may be necessary to govern the business of the Committee.

(3) Each agency of the government of the District of Columbia shall furnish to the Committee, upon request, such records, information, services, and such other assistance and facilities as may be necessary to enable the Committee to perform its function properly. Any information furnished to the Committee designated "confidential" by the person furnishing it to the Committee shall be treated by the Committee as privileged and confidential.

(g)(1) In the event of any such vacancy in the District of Columbia Board of Elections and Ethics, the Committee shall, within thirty days after such vacancy occurs, submit a list of three persons as nominees for appointment by the Mayor to fill the vacancy. If more than one such vacancy exists at the same time, the Committee shall submit a separate list of nominees for appointment to fill each such vacancy, and no individual's name shall appear on more than one such list. In filling such vacancy, the Mayor may appoint more than one individual from any list currently before the Mayor. In any case in which, after the expiration of the thirty-day period following the date on which a majority of the members of the Committee first meet as provided in subsection (a), a vacancy is scheduled to occur, by reason of the expiration of a term of office, the Committee's list of nominees for appointment to fill that vacancy shall be submitted to the Mayor not less than thirty days prior to the expiration of that term.

(2) If the Mayor fails to submit for Council approval the name of one of the individuals on a list submitted to the Mayor under this section within thirty days after receiving such list, the Committee shall appoint, with the approval of the Council, an

individual named on the list to fill the vacancy for which such list of nominees was prepared.

(3) Any individual whose name is submitted by the Committee as a nominee for appointment to the District of Columbia Board of Elections and Ethics may request that the nomination of such individual be withdrawn. If any such individual requests that his or her nomination be withdrawn, dies, or becomes disqualified to serve as a member of the Board, the Committee shall promptly nominate an individual to replace the individual originally nominated on the list submitted to the Mayor.

(h) Members of the Committee shall be appointed as soon as practicable, but in no event later than June 30, 1975. (Aug. 14, 1974, Pub. L. 93-376, title III, § 305, 88 Stat. 456.)

§ 1-1156. District of Columbia Board of Elections and Ethics.

(a) On and after August 14, 1974, the Board of Elections of the District of Columbia established under chapter 11 of this title, shall be known as the "District of Columbia Board of Elections and Ethics" and shall have the powers, duties, and functions as provided in such chapter, in any other law in effect on the date immediately preceding August 14, 1974, and in this chapter. Any reference in any law or regulation to the Board of Elections for the District of Columbia or the District of Columbia Board of Elections shall, on and after August 14, 1974, be held and considered to refer to the District of Columbia Board of Elections and Ethics.

(b) (1) Any person who violates any provision of this chapter or of chapter 11 of this title may be assessed a civil penalty by the District of Columbia Board of Elections and Ethics under paragraph (2) of this subsection of not more than \$50 for each such violation. Each occurrence of a violation of this chapter and each day of noncompliance with a disclosure requirement of this chapter or an order of the Board shall constitute a separate offense.

(2) A civil penalty shall be assessed by the Board by order only after the person charged with a violation has been given an opportunity for a hearing, and the Board has determined, by decision incorporating its findings of facts therein, that a violation did occur, and the amount of the penalty. Any hearing under this section shall be of record and shall be held in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.).

(3) If the person against whom a civil penalty is assessed fails to pay the penalty, the Board shall file a petition for enforcement of its order assessing the penalty in the Superior Court of the District of Columbia. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall be forthwith sent by registered or certified mail to the respondent and his attorney of record, and if the respondent is a political committee, to the Chairman thereof, and thereupon the Board shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and the decision

of the Board or it may remand the proceedings to the Board for such further action as it may direct. The court may determine de novo all issues of law but the Board's findings of fact, if supported by substantial evidence, shall be conclusive.

(c) Upon application made by any individual holding public office, any candidate, or any political committee, the Board, through its General Counsel, shall provide within a reasonable period of time an advisory opinion, with respect to any specific transaction or activity inquired of, as to whether such transaction or activity would constitute a violation of any provision of this chapter or of any provision of chapter 11 of this title over which the Board has primary jurisdiction. (Aug. 14, 1974, Pub. L. 93-376, title III, § 306, 88 Stat. 458; Jan. 3, 1975, Pub. L. 93-635, § 14(a), 88 Stat. 2178.)

CODIFICATION

In subsec. (a), "August 14, 1974" was substituted for "the date of the enactment of this Act" each place it appeared therein.

AMENDMENT

1975—Section 14(a) of Act Jan. 3, 1975, Pub. L. 93-635, amended subsec. (b) (2) by deleting "chapter 5 of title 5, United States Code" and inserting "the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.)".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1121.

NOTES TO DECISIONS

Constitutional questions

Even though the constitutional questions regarding challenge of the Socialist Workers' party to the provisions of this chapter based on ground that the application of the provisions to it would subject members whose names must be disclosed to harassment must be ruled on directly, it was within three-judge district court's power to direct the Board of Elections and Ethics to provide a suitable forum for plaintiffs' claims and, should the claims be proved, to provide an appropriate remedy. *J. Doe et al. v. R. Martin, Chairman, et al.* (1975, 404 F. Supp. 753).

SUBCHAPTER IV.—FINANCE LIMITATIONS

§ 1-1161. General limitations.

(a) No individual shall make any contribution which, and no person shall receive any contribution from any individual which when aggregated with all other contributions received from that individual, relating to a campaign for nomination as a candidate for election to public office, including both the primary and general or special elections, exceeds—

(1) in the case of a contribution in support of a candidate for Mayor, \$1,000;

(2) in the case of a contribution in support of a candidate for Chairman of the Council, \$750;

(3) in the case of a contribution in support of a candidate for member of the Council elected at large, \$500;

(4) in the case of a contribution in support of a candidate for member of the Board of Education elected at large or for member of the Council elected from a ward, \$200, and in the case of a runoff election, an additional \$200;

(5) in the case of a contribution in support of a candidate for member of the Board of Education elected from a ward or for official of a political party, \$100, and in case of a runoff election, an additional \$100; and

(6) in the case of a contribution in support of a candidate for a member of an Advisory Neighborhood Commission, \$25.

(b) No person (other than an individual with respect to whom subsection (a) applies) shall make any contribution which, and no person shall receive any contribution from any person (other than such an individual) which when aggregated with all other contributions received from that person, relating to a campaign for nomination as a candidate or election to public office, including both the primary and general or special elections, exceeds—

(1) in the case of a contribution in support of a candidate for Mayor, \$2,000;

(2) in the case of a contribution in support of a candidate for Chairman of the Council, \$1,500;

(3) in the case of a contribution in support of a candidate for member of the Council elected at large, \$1,000;

(4) in the case of a contribution in support of a candidate for member of the Board of Education elected at large or for member of the Council elected from a ward \$400, and in the case of a runoff election, an additional \$400;

(5) in the case of a contribution in support of a candidate for member of the Board of Education elected from a ward or for official of a political party, \$200, and in the case of a runoff election, an additional \$200; and

(6) in the case of a contribution in support of a candidate for a member of an Advisory Neighborhood Commission, \$25.

For the purposes of this subsection, the term "person" shall include a candidate making contributions relating to his candidacy for nomination for election, or election, to office. Notwithstanding the preceding provisions of this subsection, a candidate for member of the Council elected from a ward may contribute \$1,000 to his own campaign, and a candidate for member of an Advisory Neighborhood Commission may contribute \$50 to his own campaign. The provisions of this subsection to the extent that such provisions are applicable to corporations and unions shall, to that extent, expire as of July 1, 1976, unless the Council of the District of Columbia on or before such date enacts legislation repealing or modifying such provisions or extending such provisions as to corporations and unions on and after that date. In the event that the Council fails to so repeal, modify, or extend such provisions as to corporations and labor unions, the Council shall report its reasons therefor to the Committees on the District of Columbia of the Senate and the House of Representatives prior to August 1, 1975.

(c) No individual shall make any contribution in any one election which when aggregated with all other contributions made by that individual in that election exceeds \$2,000.

(d) (1) Any expenditure made by any person advocating the election or defeat of any candidate for office which is not made at the request or suggestion of the candidate, any agent of the candidate, or any political committee authorized by the candidate to make expenditures or to receive contributions for the candidate is not considered a contribution to or an expenditure by or on behalf

of the candidate for the purposes of the limitations specified in this chapter.

(2) No person may make any unauthorized expenditure advocating the election or defeat of a clearly identified candidate during a calendar year which, when added to all other unauthorized expenditures made by that person during the year advocating the election or defeat of that candidate, exceeds \$1,000.

(3) For purposes of paragraph (2)—

(A) "clearly identified" means—

(i) the candidate's name appears,

(ii) a photograph or drawing of the candidate appears, or

(iii) the identity of the candidate is apparent by unambiguous reference,

(B) "person" does not include the central committee of a political party, and

(C) "expenditure" does not include any payment made or incurred by a corporation or labor organization which, under the provisions of section 610 of title 18 of the United States Code would not constitute an expenditure by that corporation or labor organization.

(4) Every candidate shall file a statement with the Board, in such manner and form and at such times as the Board may prescribe, authorizing any person or any political committee organized primarily to support the candidacy of such candidate to either directly or indirectly, receive contributions, or make expenditures in behalf of, such candidate. No person and no committee organized primarily to support a single candidate may, either directly or indirectly, receive contributions or make expenditures in behalf of, such candidate without the written authorization of such candidate as required by this paragraph.

(e) In no case shall any person receive or make any contribution in legal tender in an amount of \$50 or more.

(f) No person shall make a contribution in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person.

(g) For purposes of the limitations contained in this section all contributions made by any person directly or indirectly to or for the benefit of a particular candidate, including contributions which are in any way earmarked, encumbered, or otherwise directed through an intermediary or conduit to that candidate, shall be treated as contributions from that person to that candidate.

(h) (1) No candidate or member of the immediate family of a candidate may make a loan or advance from his personal funds for use in connection with a campaign of that candidate for nomination for election, or for election, to public office unless that loan or advance is evidenced by a written instrument fully disclosing the terms, conditions, and parts to the loan or advance. The amount of any such loan or advance shall be included in computing and applying the limitations contained in this section only to extent of the balance of the loan or advance which is unpaid at the time of determination.

(2) For purposes of this subsection, the term "immediate family" means the candidate's spouse and

any parent, brother, or sister, or child of the candidate, and the spouse of any such parent, brother, sister, or child. (Aug. 14, 1974, Pub. L. 93-376, title IV, § 401, 88 Stat. 459; Sept. 23, 1975, D.C. Law 1-16, § 2, 22 DCR 1987; Oct. 10, 1975, D.C. Law 1-21, § 7(a), 22 DCR 2069; Oct. 30, 1975, D.C. Law 1-27, § 3(a), (b), 22 DCR 2471.)

AMENDMENTS

1975—Act Oct. 30, 1975, D.C. Law 1-27, § 3(a), (b), amended subsecs. (a) and (b) by striking out "Advisory Neighborhood Council" and inserting in lieu thereof "Advisory Neighborhood Commission".

Act Oct. 10, 1975, D.C. Law 1-21, amended the second sentence of the second par. of subsec. (b) by inserting at the end thereof "and a candidate for member of an Advisory Neighborhood Council may contribute \$50 to his own campaign".

Act Sept. 23, 1975, D.C. Law 1-16, amended the third sentence of second par. of subsec. (b), by substituting "July 1, 1976" for "July 1, 1975".

EFFECTIVE DATE OF SUBCHAPTER

See note under § 1-1121.

EFFECTIVE DATE OF 1975 AMENDMENTS

For effective date of Act Oct. 30, 1975, D.C. Law 1-27, see note under § 1-171.

For effective date of Act Oct. 10, 1975, D.C. Law 1-21, see note under § 1-171a.

Section 3 of Act Sept. 23, 1975, D.C. Law 1-16, provided: "This [amending § 1-1161(b)] act shall take effect at the end of the 30 day period provided for Congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of Act Sept. 23, 1975, D.C. Law 1-16, provided "That this act [amending § 1-1161(b)] may be cited as the 'Corporations and Labor Unions Campaign Finance Act of 1975'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1135.

§ 1-1162. Limitation on expenditures.

(a) (1) No principal campaign committee shall expend¹ any funds which when aggregated with funds expended by it, all other committees required to report to it, and by a candidate supported by such committee shall exceed (1) in the case of a candidate for Mayor, \$200,000 in the aggregate for any primary and general election in connection therewith, but in no event in excess of \$120,000 for one of such elections and \$80,000 for the other of such elections; (2) in the case of a candidate for Chairman of the Council, \$150,000 in the aggregate for any primary and general election in connection therewith, but in no event in excess of \$90,000 for one of such elections and \$60,000 for the other of such elections; (3) in the case of a candidate for member of the Council elected at large, \$100,000 in the aggregate for any primary and general election in connection therewith, but in no event in excess of \$60,000 for one of such elections and \$40,000 for the other of such elections; (4) in the case of a candidate for member of the Board of Education elected at large or member of the Council elected from a ward, \$20,000 in the aggregate for any primary and general election in connection therewith, but in no event in excess of \$12,000 for one of such elections and \$8,000 for the other of such elections; (5) in the case of a candidate for member of the Board of Education elected from

a ward, or in support of any candidate for office of a political party, \$10,000 in the aggregate for any primary and general election in connection therewith, but in no event in excess of \$6,000 for one of such elections and \$4,000 for the other of such elections; and (6) in the case of a candidate for member of an Advisory Neighborhood Commission, \$200.

(2) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Board and the Board shall publish in the District of Columbia Register the percentum difference between the price index for the twelve months preceding the beginning of such calendar year and the price index for 1974. Each amount determined under paragraph (1) shall be changed by such per centum difference. Each amount so changed shall be the amount in effect for such calendar year.

(b) No political committee or candidate shall knowingly expend any funds at a time when the principal campaign committee to which it shall report, or which has been designated by him, is precluded by subsection (a) from expending funds or which would cause such principal committee to be precluded from further expenditures. Any principal campaign committee of a candidate having reasonable knowledge to believe that further expenditures by a political committee registered in support of such candidate, or by the candidate it supports, will exceed the expenditure limitations specified in subsection (a) shall immediately notify, in writing, such political committee or candidate of that fact.

(c) Any expenditure made in connection with a campaign in a calendar year other than the calendar year in which the election is held to which that campaign relates is, for the purposes of this section, considered to be made during the calendar year in which that election is held. (Aug. 14, 1974, Pub. L. 93-376, title IV, § 402, 88 Stat. 461; Oct. 10, 1975, D.C. Law 1-21, § 7(b), 22 DCR 2069; Oct. 30, 1975, D.C. Law 1-27, § 3(c), 22 DCR 2471.)

AMENDMENTS

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended subsec. (a) (1) by substituting "Advisory Neighborhood Commission" for "Advisory Neighborhood Council".

Act Oct. 10, 1975, D.C. Law 1-21, amended subsec. (a) (1) by substituting "\$200" for "\$500".

EFFECTIVE DATES OF 1975 AMENDMENTS

For Act Oct. 30, 1975, D.C. Law 1-27, see note under § 1-171.

For Act Oct. 10, 1975, D.C. Law 1-21, see note under § 1-171a.

SUBCHAPTER V.—LOBBYING

§ 1-1171. Definitions.

When used in this subchapter—

(a) The term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make a contribution.

(b) The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract,

¹So in original. Probably should be "expend."

promise, or agreement, whether or not legally enforceable, to make an expenditure.

(c) The term "legislation" means bills, resolutions, amendments, nominations, rules, and other matters pending or proposed in the Council of the District of Columbia, and includes any other matter which may be the subject of action by the Council of the District of Columbia. (Aug. 14, 1974, Pub. L. 93-376, title V, § 501, 88 Stat. 462.)

EFFECTIVE DATE OF SUBCHAPTER

See note under § 1-1121.

§ 1-1172. Detailed accounts of contributions—Retention of receipted bills of expenditures.

(a) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes herein-after designated to keep a detailed and exact account of—

(1) all contributions of any amount or of any value whatsoever;

(2) the name and address of every person making any such contribution of \$200 or more and the date thereof;

(3) all expenditures made by or on behalf of such organization or fund; and

(4) the name and address of every person to whom any such expenditure is made and the date thereof.

(b) It shall be the duty of such person to obtain and keep a receipted bill, stating the particulars, for every expenditure of such funds exceeding \$10 in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items. (Aug. 14, 1974, Pub. L. 93-376, title V, § 502, 88 Stat. 462.)

§ 1-1173. Receipts for contributors.

Every individual who receives a contribution of \$200 or more for any of the purposes hereinafter designated shall within five days after receipt thereof render to the person or organization for which such contribution was received a detailed account thereof, including the name and address of the person making such contribution and the date on which received. (Aug. 14, 1974, Pub. L. 93-376, title V, § 503, 88 Stat. 462.)

§ 1-1174. Statements of accounts filed with Director.

(a) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 1-1176 of this title shall file with the Director between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing—

(1) the name and address of each person who has made a contribution of \$200 or more not mentioned in the preceding report; except that the first report filed pursuant to this subchapter shall contain the name and address of each person who has made any contribution of \$200 or more to such person since January 2, 1975;

(2) the total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (1) of this subsection;

(3) the total sum of all contributions made to or for such person during the calendar year;

(4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of \$10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

(5) the total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4) of this subsection;

(6) the total sum of expenditures made by or on behalf of such person during the calendar year.

(b) The statements required to be filed by subsection (a) of this section shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward. (Aug. 14, 1974, Pub. L. 93-376, title V, § 504, 88 Stat. 463.)

§ 1-1175. Preservation of statements.

A statement required by this subchapter to be filed with the Director—

(a) shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Director, Washington, District of Columbia, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the Director of its nonreceipt;

(b) shall be preserved by the Director for a period of two years from the date of filing, shall constitute part of the public records of his office, and shall be open to public inspection.

(Aug. 14, 1974, Pub. L. 93-376, title V, § 505, 88 Stat. 463.)

§ 1-1176. Persons to whom subchapter is applicable.

The provisions of this subchapter shall apply to any person (except a political committee) who, by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Council of the District of Columbia.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Council of the District of Columbia.

(Aug. 14, 1974, Pub. L. 93-376, title V, § 506, 88 Stat. 463.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1174.

§ 1-1177. Registration of lobbyists with Director—Compilation of information.

(a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Council of the District of Columbia shall, before doing anything in furtherance

of such object, register with the Director and shall give to him in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Director a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before the Council of the District of Columbia, or a committee thereof, in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Council of the District of Columbia in support of or in opposition to such legislation.

(b) All information required to be filed under the provisions of this section with the Director shall be compiled by the Director as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the District of Columbia Register. (Aug. 14, 1974, Pub. L. 93-376, title V, § 507, 88 Stat. 464.)

§ 1-1178. Reports and statements under oath.

All reports and statements required under this subchapter shall be made under oath, before an officer authorized by law to administer oaths. (Aug. 14, 1974, Pub. L. 93-376, title V, § 508, 88 Stat. 464.)

§ 1-1179. Penalties and prohibitions.

(a) Any person who violates any of the provisions of this subchapter, shall be guilty of a misdemeanor, and shall be punished by a fine of not more than \$5,000 or imprisonment for not more than twelve months, or both.

(b) In addition to the penalties provided for in subsection (a) of this section, any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Council of the District of Columbia in support of or opposition to proposed legislation; and any person who violates any provision of this subsection

shall be guilty of a felony, and shall be punished by a fine of not more than \$10,000, or imprisonment for not more than five years, or both. (Aug. 14, 1974, Pub. L. 93-376, title V, § 509, 88 Stat. 464.)

§ 1-1180. Exemptions.

The provisions of this subchapter shall not apply to—

(1) any Member of the United States House of Representatives or any Senator;

(2) any member of a staff of any person specified in paragraph (1) while operating within the scope of his employment;

(3) any member of an Advisory Neighborhood Commission;

(4) any person who receives less than \$500 during the calendar year as compensation for performing services relating to the influencing of legislation; or

(5) any entity specified in section 47-1554(d), no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

(Aug. 14, 1974, Pub. L. 93-376, title V, § 510, 88 Stat. 465; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended par. (3) by substituting "Commission" for "Council".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

SUBCHAPTER VI.—CONFLICT OF INTEREST AND DISCLOSURE

§ 1-1181. Conflict of interest.

(a) The Congress declares that elective and public office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust.

(b) No public official shall use his official position or office to obtain financial gain for himself, any member of his household, or any business with which he or a member of his household is associated, other than that compensation provided by law for said public official.

(c) No person shall offer or give to a public official or a member of a public official's household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan, gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that such public official's official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his duties, or as a reward, or which would cause the total value of such things received from the same person not a member of such public official's household to exceed \$100 during any single calendar year, except for political contributions publicly reported pursuant to section 1-1136 and transactions made in the ordinary course of business of the person offering or giving the thing of value.

(d) No person shall offer or pay to a public official, and no public official shall solicit or receive any money, in addition to that lawfully received by

the public official in his official capacity, for advice or assistance given in the course of the public official's employment or relating to his employment.

(e) No public official shall use or disclose confidential information given in the course of or by reason of his official position or activities in any way that could result in financial gain for himself or for any other person.

(f) No member or employee of the Council of the District of Columbia or Board of Education of the District of Columbia shall accept assignment to serve on a committee the jurisdiction of which consists of matters (other than of a de minimis nature) in which he or a member of his family or a business with which he is associated, has financial interest.

(g) Any public official who, in the discharge of his official duties, would be required to take an action or make a decision that would affect directly or indirectly his financial interests or those of a member of his household, or a business with which he is associated, or must take an official action on a matter as to which he has a conflict situation created by a personal, family, or client interest, shall—

(1) prepare a written statement describing the matter requiring action or decision, and the nature of his potential conflict of interest with respect to such action or decision;

(2) cause copies of such statement to be delivered to the District of Columbia Board of Elections and Ethics (referred to in this subchapter as the "Board"), and to his immediate superior, if any;

(3) if he is a member of the Council of the District of Columbia or member of the Board of Education of the District of Columbia, or employee of either, deliver a copy of such statement to the Chairman thereof, who shall cause such statement to be printed in the record of proceedings, and, upon request of said member or employee, shall excuse the member from votes, deliberations, and other action on the matter on which a potential conflict exists;

(4) if he is not a member of the Council of the District of Columbia, his superior, if any, shall assign the matter to another employee who does not have a potential conflict of interest, or, if he has no immediate superior, he shall take such steps as the Board prescribes through rules and regulations to remove himself from influence over actions and decisions on the matter on which potential conflict exists; and

(5) during a period when a charge of conflict of interest is under investigation by the Board, if he is not a member of the Council of the District of Columbia or a member of the Board of Education, his superior, if any, shall have the arbitrary power to assign the matter to another employee who does not have a potential conflict of interest, or if he has no immediate superior, he shall take such steps as the Board shall prescribe through rules and regulations to remove himself from influence over actions and decisions on the matter on which there is a conflict of interest.

(h) Neither the Mayor nor any member of the Council of the District of Columbia may represent another person before any regulatory agency or court of the District of Columbia while serving in such office. The preceding sentence does not apply to an appearance by such an official before any such agency or court in his official capacity.

(i) As used in this section, the term—

(1) "public official" means the office of the Mayor of the District of Columbia, Chairman of the Council of the District of Columbia, or member of the Council of the District of Columbia, or Chairman or member of the Board of Education of the District of Columbia, or each officer or employee of the District of Columbia government who performs duties of the type generally performed by an individual occupying grade GS-15 of the General Schedule or any higher grade or position (as determined by the Board regardless of the rate of compensation of such individual);

(2) "business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted for profit;

(3) "business with which he is associated" means any business of which the person or member of his household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value, and any business which is a client of that person;

(4) "household" means the public official and his immediate family; and

(5) "immediate family" means the public official's spouse and any parent, brother, or sister, or child of the public official, and the spouse of any such parent, brother, sister, or child.

(Aug. 14, 1974, Pub. L. 93-376, title VI, § 601, 88 Stat. 465; Jan. 3, 1975, Pub. L. 93-635, § 14(b), 88 Stat. 2178.)

REFERENCE IN TEXT

The General Schedule, referred to in subsec. (1) (1), is set out under section 5332 of Title 5, U.S. Code.

AMENDMENT

1975—Section 14(b) of Act Jan. 3, 1975, Pub. L. 93-635, amended subsec. (c) by inserting immediately before the period at the end thereof a comma and the following: "except for political contributions publicly reported pursuant to section 1-1136 and transactions made in the ordinary course of business of the person offering or giving the thing of value".

EFFECTIVE DATE OF SUBCHAPTER

See note under § 1-1121.

§ 1-1182. Disclosure of financial interest.

(a) Any candidate for nomination for election, or election, to public office who at the time he becomes a candidate, does not occupy any such office, shall file within one month after he becomes a candidate for such office, and the Mayor, and the Chairman and each member of the Council of the District of Columbia holding office under the District of Columbia Self-Government and Governmental Reorganization Act, and the Chairman and each member of the Board of Education, shall file annually, with the

Board a report containing a full and complete statement of—

(1) the amount and source of each item of income, each item of reimbursement for any expenditure, and each gift or aggregate of gifts from one source (other than gifts received by him or by him and his spouse jointly during the preceding calendar year) which exceeds \$100 in amount or value, including any fee or other honorarium received by him for or in connection with the preparation or delivery of any speech or address, attendance at any convention or other assembly of individuals, or the preparation of any article or other composition for publication, and the monetary value of subsistence, entertainment, travel, and other facilities received by him in kind;

(2) the identity of each asset held by him, or by him and his spouse jointly which has a value in excess of \$1,000, and the identity and amount of each liability owned by him, or by him and his spouse jointly, which is in excess of \$1,000 as of the close of the preceding calendar year;

(3) any transactions in securities of any business entity by him, or by him and his spouse jointly, or by any person acting on his behalf or pursuant to his direction during the preceding calendar year if the aggregate amount involved in transactions in the securities of such business entity exceeds \$5,000 during such year;

(4) all transactions in commodities by him, or by him and his spouse jointly, or by any person acting on his behalf, or pursuant to his direction during the preceding calendar year if the aggregate amount involved in such transactions exceeds \$5,000;

(5) any purchase or sale, other than the purchase or sale of his personal residence, of real property or any interest therein by him, or by him and his spouse jointly, or by any person acting on his behalf or pursuant to his direction, during the preceding calendar year if the value of property involved in such purchase or sale exceeds \$5,000; and

(6) the amount of each tax paid by the individual, or by the individual and the individual's spouse filing jointly, for the preceding calendar year, except in the case of candidates filing reports during calendar year 1974, who shall file reports for the preceding three calendar years.

(b) Any candidate for nomination for, or election to, office who at the time he becomes a candidate, does not occupy any such office, shall file within one month after he becomes a candidate for such office, and the Mayor, and the Chairman and each member of the Council of the District of Columbia holding office under the District of Columbia Self-Government and Governmental Reorganization Act, and the Chairman and each member of the Board of Education, and each officer and employee of the District of Columbia government who performs duties of the type generally performed by an individual occupying grade GS-15 of the General Schedule under section 5332 of title 5, United States Code, or any higher grade or position (as determined by the Board regardless of the rate of compensation of

such individual), shall file with the Board in a sealed envelope marked "Confidential Personal Financial Disclosure of (name)", before the fifteenth day of May in each year, the following reports of his personal financial interests:

(1) a copy of the returns of taxes, declarations, statements, or other documents which he, or he and his spouse jointly, made for the preceding year in compliance with the income tax provisions of the Internal Revenue Code of 1954 [title 26, U.S. Code];

(2) the name and address of each business or professional corporation, firm, or enterprise in which he was an officer, director, partner, proprietor, or employee who received compensation during the preceding year and the amount of such compensation;

(3) the identity of each trust or other fiduciary relation in which he held a beneficial interest having a value of \$10,000 or more, and the identity, if known, of each interest of the other fiduciary relation in real or personal property in which the candidate, officer, or employee held a beneficial interest having a value of \$10,000 or more, at any time during the preceding year. If he cannot obtain the identity of the fiduciary interests, the candidate, officer, or employee shall request the fiduciary to report that information to the Board in the same manner that reports are filed under this rule.

(c) Except as otherwise provided by this section, all papers filed under this section shall be kept by the Board in the custody of the Director for not less than seven years, and while so kept shall remain sealed. Upon receipt of a request by any member of the Board adopted by a recorded majority vote of the full Board requesting the examination and audit of any of the reports filed by any individual under section (b) of this title,¹ the Director shall transmit to the Board the envelopes containing such reports. Within a reasonable time after such recorded vote has been taken, the individual concerned shall be informed of the vote to examine and audit, and shall be advised of the nature and scope of such examination. When any sealed envelope containing any such report is received by the Director, such envelope may be opened and the contents thereof may be examined only by members of the Board in executive session. If, upon such examination, the Board determines that further consideration by the Board is warranted and within the jurisdiction of the Board, it may make the contents of any such envelope available for any use by any member of the Board, or the Director or General Counsel of the Board which is required for the discharge of his official duties. The Board may receive the papers as evidence, after giving to the individual concerned due notice and opportunity for hearing in a closed session. The Board shall publicly disclose not later than the first day of June each year the names of the candidates, officers, and employees who have filed a report. Any paper which has been filed with the Board for longer than seven

¹ So in original. Probably should be "this section".

years, in accordance with the provisions of this section, shall be returned to the individual concerned or his legal representative. In the event of the death or termination of the service of the Mayor or Chairman or member of the Council of the District of Columbia or Chairman or member of the Board of Education, or officer or employee of the District of Columbia, such papers shall be returned unopened to such individual, or to the surviving spouse or legal representative of such individual within one year of such date or termination of service.

(d) Reports required by this section (other than reports so required by candidates) shall be filed not later than sixty days following August 14, 1974, and not later than May 15 of each succeeding year. In the case of any person who ceases, prior to such date in any year, to occupy the office or position the occupancy of which imposes upon him the reporting requirements contained in subsection (a) shall file such report on the last day he occupies such office or position, or on such later date, not more than three months after such last day, as the Board may prescribe.

(e) Reports required by this section shall be in such form and detail as the Board may prescribe. The Board may provide for the grouping of items of income, sources of income, assets, liabilities, dealings in securities or commodities, and purchases and sales of real property, when separate itemization is not feasible or is not necessary for an accurate disclosure of the income, net worth, dealing in securities and commodities or purchases, and sales of rental property of any individual.

(f) All public reports filed under this section shall be maintained by the Board as public records which, under such reasonable regulations as it shall prescribe, shall be available for inspection by members of the public.

(g) For the purposes of any report required by this section, any individual shall be considered to have been Mayor, Chairman, or member of the Council of the District of Columbia, or Chairman or member of the Board of Education, or officer or employee of the District of Columbia during any calendar year if such individual served in any such position for more than six months during such calendar year.

(h) For purposes of this section, the term—

(1) "income" means gross income as defined in section 61 of the Internal Revenue Code of 1954 [26 U.S.C. 61];

(2) "security" means security as defined in section 2 of the Securities Act of 1933, as amended (15 U.S.C. 77b);

(3) "commodity" means commodity as defined in section 2 of the Commodities Exchange Act, as amended (7 U.S.C. 2);

(4) "transactions in securities or commodities" means any acquisition, holding, withholding, use, transfer, or other disposition involving any security or commodity;

(5) "immediate family" means the child, parent, grandparent, brother, or sister of an individual, and the spouse of such person; and

(6) "tax" means the taxes imposed under chapter 1 of the Internal Revenue Code of 1954 [title 26, U.S. Code], under the District of Columbia Revenue Act of 1947 [subchapter II of chapter 15 of title 47], and under the District of Columbia Public Works Act of 1954 and any other provision of law relating to the taxation of property within the District of Columbia.

(i) This section shall not apply to any candidate for nomination for election, or election, as a member of an Advisory Neighborhood Commission, or to any member of an Advisory Neighborhood Commission, except to the extent that such section applies to such candidate or member because of his status other than as such candidate or member. (Aug. 14, 1974, Pub. L. 93-376, title VI, § 602, 88 Stat. 467; Oct. 10, 1975, D.C. Law 1-21, § 7(c), 22 DCR 2069; Oct. 30, 1975, D.C. Law 1-27, § 3(d), 22 DCR 2471.)

REFERENCES IN TEXT

The District of Columbia Self-Government and Governmental Reorganization Act, referred to in subsecs. (a) and (b), is the Act of Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 774. For classification of the Act to the Code, see the Parallel Reference Tables.

The District of Columbia Public Works Act of 1954, referred to in subsec. (h) (6), is the Act of May 18, 1954, ch. 218, 68 Stat. 101. For classification of the Act to the Code, see the Parallel Reference Tables.

CODIFICATION

In subsec. (d), "August 14, 1974" was substituted for "the enactment of this Act".

AMENDMENTS

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended subsec.

(1) by substituting "Commission" for "Council".

Act Oct. 10, 1975, D.C. Law 1-21, added subsec. (1).

EFFECTIVE DATES OF 1975 AMENDMENTS

For Act Oct. 30, 1975, D.C. Law 1-27, see note under § 1-171.

For Act Oct. 10, 1975, D.C. Law 1-21, see note under § 1-171a.

SUBCHAPTER VII.—MISCELLANEOUS PROVISIONS

§ 1-1191. Penalties and enforcement.

(a) Except as provided in subsection (b), any person or political committee who violates any of the provisions of this chapter shall be fined not more than \$5,000, or shall be imprisoned for not longer than six months, or both.

(b) Any person who knowingly files any false or misleading statement, report, voucher, or other paper, or makes any false or misleading statement to the Board, shall be fined not more than \$10,000, or shall be imprisoned for not longer than five years, or both.

(c) The penalties provided in this section shall not apply to any person or political committee who, before August 14, 1974, during calendar year 1974, makes political contributions or receives political contributions or makes any political campaign expenditures, in excess of any limitation placed on such contributions or expenditures by this chapter, except such person or political committee shall not make any further such contributions or expenditures during the remainder of calendar year 1974.

(d) Prosecutions of violations of this chapter shall be brought by the United States Attorney for the District of Columbia in the name of the United States. (Aug. 14, 1974, Pub. L. 93-376, title VII, § 701, 88 Stat. 470.)

CODIFICATION

In subsec. (c), "August 14, 1974" was substituted for "the date of enactment of this Act".

EFFECTIVE DATE OF SUBCHAPTER

See note under § 1-1121.

§ 1-1192. Use of surplus campaign funds.

Within the limitations specified in this chapter, any surplus, residual, or unexpended campaign funds received by or on behalf of an individual who seeks nomination for election, or election to office shall be contributed to a political party for political purposes, used to retire the proper debts of his political committee which received such funds, or returned to the donors as follows:

- (1) in the case of an individual defeated in an election, within six months following such election;
 - (2) in the case of an individual elected to office, within six months following such election; and
 - (3) in the case of an individual ceasing to be a candidate, within six months thereafter.
- (Aug. 14, 1974, Pub. L. 93-376, title VII, § 703, 88 Stat. 471.)

§ 1-1193. Authority of Council.

Notwithstanding any other provision of law, or any rule of law, nothing in this chapter shall be construed as limiting the authority of the District of Columbia Council to enact any act or resolution, after January 2, 1975, pursuant to the District of Columbia Self-Government and Governmental Reorganization Act with respect to any matter covered by this chapter. (Aug. 14, 1974, Pub. L. 93-376, title VII, § 707, 88 Stat. 472.)

REFERENCE IN TEXT

The District of Columbia Self-Government and Governmental Reorganization Act, referred to in text, is the Act of Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 774. For classification of the Act to the Code, see the Parallel Reference Tables.

Chapter 12.—PRESIDENTIAL INAUGURAL CEREMONIES

§ 1-1201. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1202. Regulations—Special registration tags for certain motor vehicles.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Regulations, validity

Affidavit asserting that regulations which were promulgated by the District of Columbia under this chapter and which provided for temporary closing of certain streets were not published in accordance with section 1-1208 requiring publication in one or more of daily newspapers in area is insufficient to overcome presumptive validity of regulations, in light of admission in affidavit of inability to examine five daily issues of area newspapers during relevant time period. *E. Saffron v. J. V. Wilson et al.* (1975, 70 F.R.D. 51).

§ 1-1203. Appropriations—Expenses for which same may be used.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1204. Permits for use of grounds and reservations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1205. Installation of electrical facilities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1207. Permission for installation of communication facilities—When to be removed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1208. Regulations and licenses to be in force only during inaugural period—Publication of regulations—Penalties for violations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Regulations, validity

Affidavit asserting that regulations which were promulgated by the District of Columbia under this chapter and which provided for temporary closing of certain streets were not published in accordance with this section requiring publication in one or more of daily newspapers in area is insufficient to overcome presumptive validity of regulations, in light of admission in affidavit of inability to examine five daily issues of area newspapers during relevant time period. *E. Saffron v. J. V. Wilson et al.* (1975, 70 F.R.D. 51).

§ 1-1211. "Commissioners" deemed to refer to Commissioner of the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 13.—WASHINGTON METROPOLITAN REGION DEVELOPMENT

§ 1-1302. Policy—Exercise of functions of all governmental authorities to be coordinated.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1304. All agencies of federal, district and regional governments are invited to make intensive study of final report of Joint Committee on Washington Metropolitan Problems.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 14.—NATIONAL CAPITAL REGION TRANSPORTATION

SUBCHAPTER V.—ADOPTED REGIONAL SYSTEM

Sec.

1-1442a. Same—Accessibility to the handicapped.

1-1443a. District of Columbia contributions—Financing by general obligation bonds.

1-1443b. Metrobus Fund.

SUBCHAPTER I.—NATIONAL CAPITAL TRANSPORTATION PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1-1421.

§ 1-1401a. Agreements with Maryland and Virginia to develop continuing comprehensive transportation planning process.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—COMPACT FOR MASS TRANSPORTATION

§ 1-1410. Consent of Congress given for Virginia, Maryland and District of Columbia to enter into compact for regulation of mass transportation in Washington metropolitan area.

NOTES TO DECISIONS

Considerations in making fare adjustments

Transit Commission in exercising its rate-making function was under obligation to take into account any

economy that transit company could effect, and any that were probable from decreased ridership. *Democratic Central Committee et al. v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 847, 158 U.S. App. D.C. 68).

—Appreciation

Where in-service appreciation of transit company's below-the-line lands was not depleted by disposition in another rate case, Transit Commission was required to consider appreciation-allocation when it undertook to revise fares and failure to do so rendered order establishing fares fatally defective. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Capital gains realized on disposition of depreciable assets while in service do not automatically flow to transit company's investors, although extraordinary circumstances may enable them to share therein, and transit company's farepayers have protectible interest in such gains which extends to amount of depreciation which has been charged to farepayers and may extend beyond. *Democratic Central Committee of the District of Columbia et al. v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 786, 158 U.S. App. D.C. 7; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Where risk of loss of value of lands was unlikely, farepayers had shouldered significant financial onus with respect to such lands, and transit company investors benefited uniquely in their ownership of lands, farepayers were entitled to all appreciations in value of properties which transit company transferred from operating to nonoperating status and which had appreciated in value while in service. *Id.*

—Economical transit

In appraising whether transit operation is economical, account must also be taken of relationship between level of fares and worth of services rendered to riders. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Transit service is not economical simply because it is honest, mechanically efficient, and as thrifty as it can be under circumstances. *Id.*

Transit system is not economical if charge for service must be set at inordinately high levels in order for transit company to obtain profit. *Id.*

—Efficiency of management

Transit Commission, in rate-fixing proceeding, was under affirmative duty to give due consideration to efficiency of transit company's management and could not fail to investigate such management because of failure of formal parties to produce evidence of bad management. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

—Impact of higher fares

In considering bus company's application for rate increase, it was the Transit Commission's responsibility to minimize the impact of higher fares on bus company's patrons. *D. K. Powell v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 1080, 158 U.S. App. D.C. 301).

—Increased labor costs

Possible increased labor costs attributable to changes in cost-of-living index are properly to be taken into account in establishing bus fares whenever they can be predicted with reasonable accuracy. *D.C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 881, 158 U.S. App. D.C. 102).

—Profitability

Evidence in rate-fixing proceeding for transit company was sufficient to indicate to Transit Commission that it should investigate extent that company would have been able to make profit if there were no regulation at all and extent to which company could earn sufficient return to make it attractive investment at any level of fares which

could have been deemed reasonable. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

— Rate of return

Rate of return on equity of 5.33% allowed to bus company in connection with approved rate increases was not immodest. *D. K. Powell v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 1080, 158 U.S. App. D.C. 301).

Bus company's debt-equity ratio was a factor to be taken into account in ascertaining a fair return, in connection with application for rate increases. *Id.*

One of the factors which may be taken into consideration in calculating the rate of return to a public utility is the degree of risk to which its capital is put. *Id.*

Interim rate increase

Under the circumstances, Transit Commission which found that existing fares were unjust and which heard conflicting testimony as to whether decrease in passengers resulting from fare increase would result in cost savings, acted properly in ordering temporary fare increase without delving deeper into cost savings. *Democratic Central Committee et al. v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 847, 158 U.S. App. D.C. 68).

In fashioning interim fare orders, Transit Commission was not required to make full and complete findings that must accompany exercise of its authority to prescribe permanent rates. *Id.*

Notwithstanding likelihood that transit company would be obligated to make substantial refunds under decisions affecting other fare orders, Transit Commission which found that existing fares were unjust properly granted temporary increase in fares to enable transit company to operate at break-even point. *Id.*

Judicial review

Where petitioner who sought review of Transit Commission order authorizing bus company to increase its fares did not raise any question, in her application to the Commission for reconsideration, as to the propriety of recognizing bus company's position as a component of a corporate conglomerate in connection with analyzing risk factor, such issue could not be litigated in court in review proceedings. *D. K. Powell v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 1080, 158 U.S. App. D.C. 301).

For purpose of judicial review, request that Transit Commission postpone further consideration of fare increase until final determination by court, in another case, of credit properly to be allowed bus riders for appreciation in value of transit company's land withdrawn from public use adequately presented claim that Commission, in rate-fixing case, should have considered appreciation in value of certain of transit company's landholdings occurring while lands were in service and prior to their transfer from operating to nonoperating status. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Where issue of failure of Transit Commission to include income from transit company subsidiaries in its computation of new fares was not presented to Transit Commission in proceeding for establishment of fares, court, on petition to review Commission's order, would not consider claims relating thereto. *Id.*

Reasonable fare

It cannot be said that any transit fare is reasonable no matter how high it was or how few riders were able to pay fare, so long as transit company was able to show technical excess of gross income over expenses. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Reasonableness of fare entails consideration of value of service to riders, numbers who can use service at fare set,

and burden of those fares on riding public or important segments of it. *Id.*

Remedial orders

In view of defects in rate orders issued by Transit Commission, and fact that there had been public takeover of transit company's transportation assets and operations, restitution was appropriate avenue of relief. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Where prior decision in rate case directed that transit company restore all amounts collected as result of illegal fare increase and monies transferred to transit company from court-ordered reserve, and protestants had conceded certain dollar figures for gross revenues sufficient to provide transit with return on its equity capital after allowing for operating expenses and interest on company's debt, Commission in determining conceded return should have multiplied dollar amounts by number of years without substituting for test-year estimates of interest and equity the actual figures which the company logged during each year in question. *L. N. Bebbichick et al. v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 858, 158 U.S. App. D.C. 79).

Where court declared Transit Commission's rate-making order invalid, restitution was proper remedy. *Democratic Central Committee of the District of Columbia et al. v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 786, 158 U.S. App. D.C. 7; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

Procedure to be followed by Transit Commission to assist court in determining amount of restitution to be paid by transit company as a result of declaration of invalidity of rate-fixing order set forth. *Id.*

Transfer of transit company from private to public company did not affect private company's obligation to make refund under invalid rate-fixing order. *Id.*

Requirements of Commission

In dealing with bus company's application for leave to elevate its fares, Transit Commission was called upon to balance the interest of both company and the public. *D. K. Powell v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 1080, 158 U.S. App. D.C. 301).

Transit Commission, in rate-fixing proceeding, was not at liberty to sit back and place responsibility for initiating or carrying through essential inquiries on private parties. *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission* (1973, 485 F. 2d 886, 158 U.S. App. D.C. 107; cert. denied 94 S. Ct. 1451, 415 U.S. 935).

§ 1-1410a. Consent of Congress given to make certain amendments to mass transportation compact.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1421, 1-1431.

§ 1-1411. Commissioner authorized and directed to enter into compact and carry out terms thereof—Appropriations authorized for District of Columbia—Commissioner may not adopt amendment to compact without prior approval of Congress.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1412. Suspension of certain laws for duration of compact—Reinstatement of laws upon termination of compact—Certain police powers of parties to compact and Director of National Park Service not affected—Franchise rights and obligations of D.C. Transit System, Inc., not impaired—"Public Interest" includes interest of carrier employees—Laws relating to carrier employee benefits, wages, hours and working conditions, collective bargaining rights, rights to self organization continue in force—Jurisdiction of Public Service Commission and Interstate Commerce Commission transferred to Washington Metropolitan Area Transit Commission.

NOTES TO DECISIONS

Construction

Bus drivers who were engaged in interstate commerce and who regularly spent more than 50% of their work week in District of Columbia were entitled to benefits of District of Columbia Minimum Wage Act [§ 46-301 et seq.]. *K. C. Williams et al. v. W. M. A. Transit Company* (1972, 472 F.2d 1258, 153 U.S. App. D.C. 183; rev'g 268 A.2d 261).

Statutory interpretations by D.C. Minimum Wage Board and Corporation Counsel were entitled to weight as construction of D.C. code unless plainly unreasonable or contrary to ascertainable legislative intent. *Id.*

§ 1-1416. Reservation of right to alter, amend or repeal—Submission of periodic report to Congress—Disclosure of information—Access to books and records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER III.—RAIL RAPID TRANSIT

SUBCHAPTER REFERRED TO IN U.S. CODE

This subchapter is referred to in 42 U.S.C. 4151.

§ 1-1421. Statement of findings and purpose.

To further the objectives of subchapter I of this chapter, the Congress hereby finds and declares that—

* * * * *

(c) Various steps have already been taken to bring such a system into being, including the preparation by the National Capital Transportation Agency (hereinafter referred to as the "Agency") of a Transit Development Program for the National Capital region, and authorization of the negotiation by the Commissioner of the District of Columbia, the State of Maryland and the Commonwealth of Virginia of an interstate compact to establish a regional transportation organization under the terms of sections 1-1408 and 1-1409, and approval by the Congress of the Washington Metropolitan Area Transit Regulation Compact (sections 1-1410 and 1-1410a). Nothing in this subchapter shall be construed as altering or amending the Washington Metropolitan Area Transit Regulation Compact.

(d) While the negotiation of an interstate compact to establish a regional transportation organization has not been completed, and plans for the development of improved mass transit facilities throughout the National Capital region are still being developed, the Agency has prepared a satisfactory Transit Development Program for the estab-

lishment, principally within the District of Columbia, of a system of rail rapid transit lines and related facilities which are capable of being extended to serve other parts of the region, and the design and construction of such facilities should now proceed as contemplated by subchapter I of this chapter.

* * * * *

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section is set out in this supplement to correct translations appearing in this section in the main edition.

CROSS REFERENCES

Blind and physically disabled persons, equal access to public conveyances, see § 6-1502.

Handicapped persons, accessibility to subway and rapid rail transit system, Federal contribution, see § 1-1442a.

§ 1-1426. Separability.

If any part of this subchapter is declared unconstitutional the constitutionality of no other part of the subchapter shall be affected thereby. (Sept. 8, 1965, 79 Stat. 666, Pub. L. 89-173, § 8.)

CODIFICATION

Section is set out in this supplement to correct translations appearing in this section in the main edition.

SUBCHAPTER IV.—WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT

§ 1-1431. Consent of Congress given for, and adoption of, compact amending compact set out under section 1-1410.

The Congress hereby consents to, adopts and enacts for the District of Columbia an amendment to the Washington Metropolitan Area Transit Regulation Compact, for which Congress heretofore has granted its consent (sections 1-1410 and 1-1410a) by adding thereto title III, known as the Washington Metropolitan Area Transit Authority Compact (referred to in this subchapter as title III), substantially as set out below. (Nov. 6, 1966, 80 Stat. 1324, Pub. L. 89-774, § 1.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The Washington Metropolitan Area Transit Authority Compact, referred to in text, is set out under this section in the 1973 ed. of the Code.

CODIFICATION

Section is set out in this supplement to correct translations appearing in this section in the main edition.

NOTES TO DECISIONS

Administrative Procedure Act

Administrative Procedure Act does not apply to Washington Metropolitan Area Transit Authority inasmuch as Authority is not a federal agency. *R. Birnberg et al. v. Washington Metropolitan Area Transit Authority* (1975, 389 F. Supp. 340).

Condemnation

Whether or not Congress explicitly or implicitly authorized the Washington Metropolitan Area Transit Authority to condemn cemetery property, the Authority could condemn a property interest in the cemetery for the limited purpose of making eight test borings to determine feasibility of tunnel under the cemetery where, inter alia, taking would be limited to 30 days, borings would be made in roadway so that no grave would be physically disturbed, and access to all graves would be maintained at all times. *Washington Metropolitan Area Transit Authority v. One Parcel of Land, etc., et al.* (1975, 514 F. 2d 1350, 169 U.S. App. D.C. 109).

Decisions of Transit Authority

Transit Authority board of directors is not required to make statement of findings or reasons to support its decisions, since board is a quasi-legislative body engaged in planning and construction of rapid rail transit system and, as such, its decisions are not subject to any constitutional or statutory due process requirement mandating findings or reasons. *R. Birnberg et al. v. Washington Metropolitan Area Transit Authority* (1975, 389 F. Supp. 340).

Environmental impact

In absence of showing that Washington Metropolitan Area Transit Authority had become a federal agency, there was no requirement for an environmental impact statement in connection with construction of subway route. *J. J. Saunders v. Washington Metropolitan Area Transit Authority* (1973, 359 F. Supp. 457; rem'd 486 F.2d 1315, 159 U.S. App. D.C. 55).

Public hearing

It is not necessary that quorum of board of directors of Transit Authority be present at public hearings on transit system alignment nor that members of board of directors who attend public hearings on transit system alignment be same board members who ultimately vote to adopt alignment discussed at public hearings. *R. Birnberg et al. v. Washington Metropolitan Area Transit Authority* (1975, 389 F. Supp. 340).

In action to enjoin construction subway segment area in which plaintiffs were residents on ground that hearing held by Washington Metropolitan Area Transit Authority was too broad to suffice as public hearing required by law, evidence established that, with exception of question of design and location of vent shafts, all aspects of segment had been previously accorded due consideration and opportunity for public comments and that there was no likelihood that those other aspects could be so affected by public hearing on location and design of vent shafts as to warrant a full hearing de novo on all aspects of the segment. *J. J. Saunders v. Washington Metropolitan Area Transit Authority* (1973, 359 F. Supp. 457; rem'd 486 F. 2d 1315, 159 U.S. App. D.C. 55).

There is no need for public hearing on each minor detail of plan for construction of subway by Washington Metropolitan Area Transit Authority, but only on major elements, such as stations, routes, station access points and planned vent shafts, but word "major" is not to be defined by arguments over semantics, cost of construction or size of facility, and real public interest in opportunity to be heard should be measured by impact of facility on people affected, whether by actual displacement, taking of property, removal of trees or altering character of neighborhood. *Id.*

Residents had no absolute right to block subway through their area or its vent shafts but had right to be heard on design and location of those facilities. *Id.*

Washington Metropolitan Area Transit Authority had burden, in connection with public hearings to be held concerning construction of subway facilities, to provide adequate notice concerning items which were likely to be focus of interest on part of persons affected. *Id.*

Review

Decision of board of directors of Washington Metropolitan Area Transit Authority to build segment of rapid rail transit system under certain street was not arbitrary, capricious, or irrational. *R. Birnberg et al. v. Washington Metropolitan Area Transit Authority* (1975, 389 F. Supp. 340).

§ 1-1431a. Consent of Congress to compact amendments.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1431b. Consent of Congress to compact amendments—Acquisition of mass transit bus systems.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1432. Authority and duty of Commissioner to execute and carry out compact.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1436. Reservation of right to alter, amend or repeal—Submission of reports to Congress—Disclosure of information—Access to books and records—Audits.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER V.—ADOPTED REGIONAL SYSTEM**§ 1-1441. Definitions.****STUDY AND DEMONSTRATION PROGRAM OF HIGH-SPEED TRANSPORTATION TO DULLES AIRPORT**

Section 146 of Act Aug. 13, 1973, Pub. L. 93-87, provided: "The Secretary [of Transportation] is authorized to undertake a study and demonstration program for high-speed bus service from collection points in the Washington, District of Columbia area to Dulles International Airport, Virginia. Such study and demonstration shall utilize exclusive bus transportation lanes between points of origin and termination of such service, and include, where necessary, the construction of such exclusive bus transportation lanes as well as terminal and parking facilities. Such study and demonstration shall also include the purchase of high-speed buses. As necessary to implement this section, the Secretary shall undertake research into the development of buses designed to maintain high-speed, safe transportation. Not to exceed \$10,000,000 of the amount authorized to be apportioned under section 104(b)(6) of title 23, United States Code, for the fiscal year ending June 30, 1975, shall be available to the Secretary to carry out this section and such sum shall be set aside for such purpose prior to the apportionment of such amount for such fiscal year."

§ 1-1442. Authorization of Federal contributions.

(a) To provide the Federal share of the cost of the Adopted Regional System, which system supercedes that heretofore authorized by the Congress in subchapter III of this chapter, the Secretary of

Transportation is authorized to make annual contributions to the Transit Authority in amounts sufficient to finance in part the cost of the Adopted Regional System; except that the aggregate amount of Federal contributions for the Adopted Regional System, including the \$100,000,000 authorized to be appropriated by section 1-1424(1), shall not exceed the lower amount of \$1,147,044,000 or two-thirds of the net project cost of the Adopted Regional System.

* * * * *

CODIFICATION

Section is set out in this supplement to correct transcriptions appearing in this section in the main edition.

§ 1-1442a. Same—Accessibility to the handicapped.

The Secretary of Transportation is authorized to make payments to the Washington Metropolitan Area Transit Authority in amounts sufficient to finance 80 per centum of the cost of providing such facilities for the subway and rapid rail transit system authorized in this subchapter as may be necessary to make such subway and system accessible by the handicapped through implementation of Public Laws 90-480 and 91-205 (chapter 51 of title 42, United States Code). There is authorized to be appropriated, to carry out this section, not to exceed \$65,000,000. (Aug. 13, 1973, Pub. L. 93-87, title I, § 140, 87 Stat. 271.)

CODIFICATION

Section was enacted as part of the Federal-Aid Highway Act of 1973, and not as part of the National Capital Transportation Act of 1969 which comprises this subchapter.

CROSS REFERENCE

Equal access to public conveyances, see § 6-1502.

§ 1-1443. Authorization of District of Columbia contributions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1443a. District of Columbia contributions—Financing by general obligation bonds.

Notwithstanding any provision of law to the contrary, beginning with fiscal year 1976 the District share of the cost of the Adopted Regional System described in this subchapter, may be payable from the proceeds of the sale of District general obligation bonds issued pursuant to this title. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 489, 87 Stat. 808.)

REFERENCE IN TEXT

"This title", referred to in text, is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of the National Capital Transportation Act of 1969 which comprises this subchapter.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in

part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

CROSS REFERENCE

General obligation bonds, see § 47-241 et seq.

§ 1-1443b. Metrobus Fund.

(a) There is hereby established a special fund to be known as the "Metrobus Fund" (hereinafter in this section referred to as the "Fund"). The Fund shall consist of amounts paid into it, from time to time, from the revenue collected as follows:

(1) Twenty-five per cent of the amounts collected under chapter 1 of title 40.

(2) At least one-sixth of the amounts collected under section 40-603(j).

(3) The amounts collected under section 47-2602(1) (imposing a tax on the gross receipts from parking).

(4) At least one-fifth of the amounts collected under section 47-1901 (imposing a tax on motor-vehicle-fuel), such amounts to be deposited into the Fund no sooner than July 1, 1976.

(b) The amounts in the Fund shall be available, when appropriated, to pay the District of Columbia's share of the cost of the construction and operation of the Metrobus system. (Oct. 21, 1975, D.C. Law 1-23, title I, § 103, 22 DCR 2094.)

CODIFICATION

Section was enacted as part of the Revenue Act of 1975, and not as part of the National Capital Transportation Act of 1969 which comprises this subchapter.

EFFECTIVE DATE

Sec. 801(f) of act Oct. 21, 1975, D.C. Law 1-23, provided: "Sections 103, 104, 202, and 602 [enacting § 1-1443b and provisions set out as notes under §§ 40-103, 40-603, 47-1551, 47-1901] shall take effect on the date this act becomes law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-103, 47-1901.

§ 1-1444. Construction approvals.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 1-1446. Guarantee of obligations.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 24 of title 12, U.S. Code.

**SUBCHAPTER VI.—ACQUISITION OF MASS
TRANSIT BUS SYSTEMS**

§ 1-1462. District of Columbia authorizations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—ADMINISTRATIVE PROCEDURE

Sec.

1-1503a. Open meetings and hearings—Transcripts—Availability to the public.

1-1507. Compilation of rules.

§ 1-1501. Other authority.

This chapter shall supplement all other provisions of law establishing procedures to be observed by the Mayor and agencies of the District government in the application of laws administered by them, except that this chapter shall supersede any such law and procedure to the extent of any conflict therewith. (Oct. 21, 1968, Pub. L. 90-614, § 2, 82 Stat. 1204; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(a), 22 DCR 2048).

AMENDMENT

1975—Act Oct. 8, 1975, D.C. Law 1-19, amended section by substituting "Mayor" for "Commissioner, the Council,".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 104 of Act Oct. 8, 1975, D.C. Law, provided: "This Title [amending §§ 1-1501-1-1503 and §§ 1-1504-1-1510 and enacting material set out as notes under this section and § 1-1507] shall take effect upon becoming law by operation of subsection (c) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act (87 Stat. 814) [§ 1-147(c)]."

SHORT TITLE

Section 101 of Title I of Act Oct. 8, 1975, D.C. Law 1-19, provided: "This Title [amending §§ 1-1501-1-1503 and 1-1504-1-1510 and enacting material set out as notes under this section and § 1-1507] may be cited as the 'District of Columbia Administrative Procedure Act Amendments act of 1975'."

PROCEEDINGS COMMENCED BEFORE 1975 AMENDMENTS BY D.C. LAW 1-19

Section 103(a) of Act Oct. 8, 1975, D.C. Law 1-19, provided: "The amendments made by this Title [amending §§ 1-1501-1-1503 and §§ 1-1504-1-1510] shall not be construed as abrogating any right vested or affecting or terminating any suit or other proceeding commenced before the effective date of those amendments. Any such suit or other proceeding may be continued or maintained to its conclusion as if those amendments had not been enacted."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1156, 2-123, 2-129, 2-312, 2-406, 2-407, 2-492, 2-708, 2-1235, 2-1236, 2-1238, 2-1809, 3-115, 11-722, 11-1525, 29-417, 35-427, 35-1709, 35-1913, 36-130, 36-409, 40-302, 40-420, 45-1409, 45-1652, 46-303, 46-312, 47-646, 47-2101, 49-402.

NOTES TO DECISIONS

Applicability to Joint Committee on Landmarks

Joint Committee on Landmarks of the National Capital as an intergovernmental agency is not an agency of the District of Columbia, and the Court of Appeals lacks jurisdiction to entertain petition for review of its action under this chapter. *J. W. Latimer, Jr., et al. v. The Joint Committee on Landmarks of the National Capital* (D.C. App. 1975, 345 A.2d 484).

Applicability to National Capital Housing Authority

The National Capital Housing Authority is not an "agency of the District of Columbia" within this chapter which establishes procedures to be observed by the commissioner, the council, and agencies of the District government. *R. L. Coleman et al. v. United States* (D.C. App. 1973, 311 A.2d 496).

Applicability to Public Service Commission

Provision of section 11-722 that Court of Appeals has jurisdiction to review orders and decisions of any agency of the District in accordance with Administrative Procedure Act (§§ 1-1501 et seq.), and may review orders or decision of the Public Service Commission in accordance with Commission's organic act (chapters 1-10 of title 43),

carves out only a limited area in which Administrative Procedure Act is inapplicable to the Commission, that being in the area of standard and scope of review, rather than a wholesale exemption from Administrative Procedure Act coverage. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 339 A.2d 710).

Applicability to Zoning Commission proceedings

Proceedings before District of Columbia Zoning Commission are quasi-legislative in character, not adjudicative in nature, and strictures of this chapter and full range of due process protections necessary to an adversary adjudication are not applicable. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 686).

Construction

Decision of Public Service Commission in telephone rate proceeding to furnish transcripts to intervenors at telephone company's expense does not constitute a proper exercise of Commission's delegated powers to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it, since any procedure established by the Commission must conform with the minimum requirements set forth in Administrative Procedure Act (§§ 1-1501 et seq.), and since Commissions rule that transcripts be furnished to intervenors at telephone company's expense was a mere nullity because it contravened express language of section 1-1509. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 339 A.2d 710).

§ 1-1502. Definition.

As used in this chapter—

(1) (a) the term "Mayor" means the Mayor of the District of Columbia, or his or her designated agent;

(b) the term "Council" means the Council of the District of Columbia established by section 1-141(a) unless the term "District of Columbia Council" is used in which event it shall mean the District of Columbia Council established by subsection (a) of section 201 of Reorganization Plan No. 3 of 1967 (81 Stat. 948);

(2) the term "District" means the District of Columbia;

(3) the term "agency" includes both subordinate agency and independent agency;

(4) the term "subordinate agency" means any officer, employee, office, department, division, board, commission, or other agency of the government of the District, other than an independent agency or the Mayor or the Council, required by law or by the Mayor or the Council to administer any law or any rule adopted under the authority of a law;

(5) the term "independent agency" means any agency of the government of the District with respect to which the Mayor and the Council are not authorized by law, other than this chapter, to establish administrative procedures, but does not include the several courts of the District and the District of Columbia Tax Court;

(6) the term "rule" means the whole or any part of any Mayor's or agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor or of any agency;

(7) the term "rulemaking" means Mayor's or agency process for the formulation, amendment, or repeal of a rule;

(8) the term "contested case" means a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law (other than this chapter), or by constitutional right, to be determined after a hearing before the Mayor or before an agency, but shall not include (A) any matter subject to a subsequent trial of the law and the facts de novo in any court; (B) the selection or tenure of an officer or employee of the District; (C) proceedings in which decisions rest solely on inspections, tests, or elections; and (D) cases in which the Mayor or an agency act as an agent for a court of the District;

(9) the term "person" includes individuals, partnerships, corporations, associations, and public or private organizations of any character other than the Mayor, the Council, or an agency;

(10) the term "party" includes the Mayor and any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any proceeding before the Mayor or an agency, but nothing herein shall be construed to prevent the Mayor or an agency from admitting the Mayor or any person or agency as a party for limited purposes;

(11) the term "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of the Mayor or of any agency in any matter other than rulemaking, but including licensing;

(12) the term "license" includes the whole or part of any permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission granted by the Mayor or any agency;

(13) the term "licensing" includes process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license by the Mayor or an agency;

(14) the term "relief" includes the whole or part of any Mayor's or agency (A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (B) recognition of any claim, right, immunity, privilege, exemption, or exception; and (C) taking of any other action upon the application or petition of, and beneficial to, any person;

(15) the term "proceeding" means any process of the Mayor or an agency as defined in paragraphs (6), (11), and (12) of this section; and

(16) the term "sanction" includes the whole or part of any Mayor's or agency (A) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (B) withholding of relief; (C) imposition of any form of penalty or fine; (D) destruction, taking, seizure, or withholding of property; (E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (F) requirement, revocation, or suspension of a license; and (G) taking of other compulsory or restrictive action.

(17) the term "regulation" means the whole or any part of any District of Columbia Council statement of general or particular applicability and fu-

ture effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor, District of Columbia Council, or any agency.

(Oct. 21, 1968, Pub. L. 90-614, § 3, 82 Stat. 1204; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(b)-(q), 22 DCR 2048.)

REFERENCE IN TEXT

"Reorganization Plan No. 3 of 1967", referred to in par. 1(b), is set out in the Appendix to this title in the main edition.

AMENDMENTS

1975—Par. (1). Section 102 (b), (c) of Act Oct. 8, 1975, D.C. Law 1-19, amended par. (1) generally. Prior to amendment, par. (1) read:

"(1) (a) the term 'Commissioner' means the Commissioner of the District of Columbia, or his designated agent;

"(b) the term 'Council' means the District of Columbia Council;"

Pars. (4), (5). Section 102 (d), (e) of such Act amended pars (4) and (5) by substituting "Mayor" for "Commissioner".

Par. (6). Section 102(f) of such Act amended par. (6) by substituting "Mayor's" and "Mayor" for "Commissioner's, Council's," and "Commissioner, Council," respectively.

Par. (7). Section 102(g) of such Act amended par. (7) by substituting "Mayor's" for "Commissioner's, Council's".

Par. (8). Section 102(h) of such Act amended par. (8) by substituting "Mayor" for "Commissioner, the Council," and "Commissioner or the Council".

Par. (9). Section 102(i) of such Act amended par. (9) by substituting "Mayor" for "Commissioner".

Par. (10). Section 102(j) of such Act amended par. (10) by substituting "Mayor" for "Commissioner, the Council".

Par. (11). Section 102(k) of such Act amended par. (11) by substituting "Mayor" for "Commissioner or Council".

Par. (12). Section 102(l) of such Act amended par. (12) by substituting "Mayor" for "Commissioner, the Council".

Par. (13). Section 102(m) of such Act amended par. (13) by substituting "Mayor" for "Commissioner or the Council".

Par. (14). Section 102(n) of such Act amended par. (14) by substituting "Mayor's" for "Commissioner's or Council's".

Par. (15). Section 102 (o) of such Act amended par. (15) by substituting "Mayor" for "Commissioner or Council".

Par. (16). Section 102(p) of such Act amended par. (16) by substituting "Mayor's" for "Commissioner's or Council's".

Par. (17). Section 102(q) of such Act added par. (17).

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

NOTES TO DECISIONS

Contested case

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property, the Commission was acting legislatively and was not subject to the "contested case" provisions of this chapter, with the result that such decision is not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus is subject to review. *W. C. & A. N. Miller Development Company v. District of Columbia Zoning Commission* (D.C. App. 1975, 340 A.2d 420).

An administrative proceeding is primarily adjudicatory and therefore governed by "contested case" procedural requirements if it is concerned basically with weighing particular information and arriving at a decision directed at the rights of specific parties; on the other hand, an administrative proceeding is not subject to "contested case" procedural requirements if the administrative body

is acting in a legislative capacity, making policy decisions directed toward general public. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A.2d 310).

Phrase "after a hearing" as used in statute defining a "contested case" as meaning a proceeding in which the legal rights and privileges of specific parties are required to be determined after a hearing means after a trial-type hearing where such is implicitly required by either the organic act or constitutional right. *Id.*

Where a proceeding by a quasi-legislative body is concerned primarily with the immediate rights, duties, or privileges of specific parties instead of with general policy of future applicability, such proceeding falls within the "contested case" provisions of the Administrative Procedure Act. *Id.*

— Environmental protection

Controversy over refusal of Mayor-Commissioner and his designated agents to grant petitioners' request to take immediate steps to correct by appropriate action an alleged air pollution emergency in District of Columbia was not a "contested case" within purview of this chapter granting limited judicial review to District of Columbia Court of Appeals in respect to orders or decisions of a District of Columbia agency made "after a hearing before the Commissioner or the Council or before an agency" in a "contested case." *Environmental Defense Fund, Inc., et al. v. Mayor-Commissioner of the District of Columbia et al.* (D.C. App. 1974, 317 A.2d 515).

— Minimum wages

Public hearing preliminary to revision of Minimum Wage and Industrial Safety Board's order with regard to persons employed in hotel, restaurant and allied occupations was not a "contested case" within purview of notice provisions of this chapter. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A.2d 294).

Application for special exception to allow construction in residential zone of private school for kindergarten and elementary school age children resulted in a "contested case" within meaning of this chapter. *Rose Lees Hardy Home and School Association et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 324 A.2d 701).

— Street closings

Decision of District of Columbia Council, pursuant to the Street Readjustment Act, to close portion of street and, once closed, to authorize the surveyor to convey title to the abutting landowners for development purposes did not constitute a "contested case" within meaning of the Administrative Procedure Act; in determining whether it should close the street the Council was exercising legislative discretion based on primarily legislative facts; also, Council's decision regarding compensation, though primarily adjudicatory, did not fall within the "contested case" definition since it was subject to trial de novo in Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A.2d 310).

— Zoning

Proceedings held under the District of Columbia zoning commission's rules of practice, resulting in down-zoning of area, were not a "contested case" within meaning of Administrative Procedure Act, but were adversary in nature and equity could be invoked. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 683).

Joint Committee on Landmarks

Joint Committee on Landmarks of the National Capital as an intergovernmental agency is not an agency of the District of Columbia, and the Court of Appeals lacks jurisdiction to entertain petition for review of its action under this chapter. *J. W. Latimer, Jr., et al. v. The Joint Committee on Landmarks of the National Capital* (D.C. App. 1975, 345 A.2d 484).

National Capital Housing Authority

The National Capital Housing Authority is not an "agency of the District of Columbia" within this chapter which establishes procedures to be observed by the commissioner, the council, and agencies of the District gov-

ernment. *R. L. Coleman et al. v. United States* (D.C. App. 1973, 311 A.2d 496).

Rulemaking

Interpretation or implementation by taxing authorities of words "full and true value" by changing debasement factor for taxation of single-family residences from 55 percent of estimated market value to 60 percent is, within meaning of this chapter, "rulemaking" such as to require publication of notice despite contention that change was part of effort to equalize District of Columbia tax assessments as required by Constitution. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

§ 1-1503. Establishment of general procedures.

(a) The Mayor and the Council shall for the Mayor and for each subordinate agency, establish or require each subordinate agency to establish procedures in accordance with this chapter.

(b) Each independent agency shall establish procedures in accordance with this chapter.

(c) The procedures required to be established by subsections (a) and (b) of this section shall include requirements of practice before the Mayor and each agency. (Oct. 21, 1968, Pub. L. 90-614, § 4, 82 Stat. 1205; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(r), (s), 22 DCR 2051.)

AMENDMENTS

1975—Subsec. (a). Section 102(r) of Act Oct. 8, 1975, D.C. Law 1-19, amended subsec. (a) by substituting "The Mayor and the Council shall for the Mayor and" for "The Commissioner and the Council shall, for themselves and".

Subsec. (c). Section 102(s) of such Act amended subsec. (c) by substituting "Mayor" for "Commissioner and the Council".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

NOTES TO DECISIONS

Delay

Complaint charging discrimination against minority groups depriving them of equal employment opportunities, and amendment to the complaint, and a subpoena duces tecum were not invalid based on failure of Human Relations Commission to promulgate rules of procedure as required by District of Columbia Administrative Procedure Act, where Commission promulgated and published rules of procedure during pendency of proceedings, and defendant had not been prejudiced by delay in the publication. *D.C. Human Relations Commission v. National Geographic Society* (1973, 475 F.2d 366, 154 U.S. App. D.C. 255).

§ 1-1503a. Open meetings and hearings—Transcripts—Availability to the public.

(a) All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the District Council, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation or other official action shall be effective unless taken, made, or enacted at such meeting.

(b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the District government. Copies of such written transcripts or copies of such transcriptions shall be available upon request to the public at reasonable cost. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 742, 87 Stat. 831.)

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of the District of Columbia Administrative Procedure Act which comprises this chapter.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

NOTES TO DECISIONS

Board of Education meetings

Given the express intent of Congress to allow certain meetings of the Board of Education to be closed and the embodiment of that intent in a specific statute (§ 31-101), that prior statute remains in effect as a qualification of this section requiring meetings of the District government to be open to the public. *R. Goodwin et al. v. District of Columbia Board of Education et al.* (D.C. App. 1975, 343 A.2d 63).

§ 1-1504. Official publication.

(a) The Mayor shall publish at regular intervals not less frequently than once every two weeks a bulletin to be known as the "District of Columbia Register," in which shall be set forth the full text of all rules filed in the office of the Mayor during the period covered by each issue of such bulletin, except that the Mayor may in his discretion omit from the District of Columbia Register rules the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if, in lieu of such publication, there is included in the Register a notice stating the general subject matter of any rule so omitted and stating the manner in which a copy of such rule may be obtained.

(b) All courts within the District shall take judicial notice of rules, regulations, and Council acts and resolutions published or of which notice is given in the District of Columbia Register pursuant to this section.

(c) Publication in the District of Columbia Register of Council acts and resolutions, regulations adopted, amended, or repealed by the District of Columbia Council and rules adopted, amended, or repealed by the Mayor or by any agency shall not be considered as a substitute for publication in one or more newspapers of general circulation when such publication is required by statute.

(d) The Mayor shall publish in the District of Columbia Register all acts, resolutions, and notices of the Council and shall publish such other matters as requested by the Chairman of the Council or his designee.

(e) The Mayor is authorized to publish in the District of Columbia Register, in addition to rules published under authority contained in subsection (a) of this section and matters published under authority contained in subsection (d) of this section, (1) cumulative indexes to rules, regulations, and Council acts and resolutions which have been adopted, amended, or repealed; (2) information on changes in the organization of the District Government; (3) notices of public hearings; (4) codifications of rules, regulations, and Council acts and resolutions; and (5) such other matters as the Mayor may from time to time determine to be of general public interest. (Oct. 21, 1968, Pub. L. 90-614, § 5, 82 Stat.

1206; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(t)-(x), 22 DCR 2051.)

AMENDMENTS

1975—Subsec. (a). Section 102(t) of Act Oct. 8, 1975, D.C. Law 1-19, amended subsec. (a) by substituting "Mayor" for "Commissioner".

Subsec. (b). Section 102(u) of such Act amended subsec. (b) by inserting ", regulations, and Council acts and resolutions" immediately after "rules".

Subsec. (c). Section 102(v) of such Act amended subsec. (c) by inserting "Council acts and resolutions, regulations adopted, amended, or repealed by the District of Columbia Council and" immediately preceding "rules"; and substituted "Mayor" for "Commissioner or Council".

Subsec. (d). Section 102(x) of such Act added a new subsec. (d). Former subsec. (d) was amended and redesignated subsec. (e) by section 102(w).

Subsec. (e). Section 102(w) of such Act redesignated subsec. (d) as subsec. (e) and amended the subsection generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1601.

NOTES TO DECISIONS

Publication

A police regulation of the District of Columbia pertaining to equal employment opportunities even if not published in a compilation was properly published where a special edition of the District of Columbia Register incorporated District of Columbia police regulations and such regulations were available for purchase at District of Columbia publications office. *D.C. Human Relations Commission v. National Geographic Society* (1973, 475 F. 2d 366, 154 U.S. App. D.C. 255).

§ 1-1505. Public notice and participation in rulemaking.

(a) The Mayor and each independent agency shall, prior to the adoption of any rule or the amendment or repeal thereof, publish in the District of Columbia Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) notice of the intended action so as to afford interested persons opportunity to submit data and views either orally or in writing, as may be specified in such notice. The publication or service required by this subsection of any notice shall be made not less than thirty days prior to the effective date of the proposed adoption, amendment, or repeal, as the case may be, except as otherwise provided by the Mayor or the agency upon good cause found and published with the notice.

(b) Any interested person may petition the Mayor or an independent agency, requesting the promulgation, amendment, or repeal of any rule. The Mayor and each independent agency shall prescribe by rule the form for such petitions, and the procedure for their submission, consideration, and disposition. Nothing in this chapter shall make it mandatory that the Mayor or any agency promulgate, amend, or repeal any rule pursuant to a petition therefor submitted in accordance with this section.

(c) Notwithstanding any other provision of this section, if, in an emergency, as determined by the Mayor or an independent agency, the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals, the Mayor or such independent agency may adopt such rules as may be necessary in the circumstances, and such rule may become effective immediately.

Any such emergency rule shall forthwith be published and filed in the manner prescribed in section 1-1506. No such rule shall remain in effect longer than one hundred and twenty days after the date of its adoption. (Oct. 21, 1968, Pub. L. 90-614, § 6, 82 Stat. 1206; Oct. 8, 1975, D.C. Law 1-19, title I, § 102 (y), 22 DCR 2053.)

AMENDMENTS

1975—Act Oct. 8, 1975, D.C. Law 1-19, amended section as follows: (A) by striking out “Commissioner and Council” each place it appears and inserting in lieu thereof “Mayor” in each such place; and (B) by striking out “Commissioner and Council” each place it appears and inserting in lieu thereof “Mayor” in each such place.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

CROSS REFERENCE

Publication of rules and regulations relating to adoption subsidy payments, see § 3-115.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3-115.

NOTES TO DECISIONS

Emergency regulations

Evidence concerning refusal of some patrons to pay established bus fare immediately after judicial decision that transit commission's bus fare regulation was invalid and results which were likely to flow from the decision sustained determination of District of Columbia Council that emergency existed and justified invocation of council's emergency procedures for purpose of enacting bus fare regulation. *J. W. Hobson v. District of Columbia* (D.C. App. 1973, 304 A. 2d 637).

District of Columbia Council's interpretation of its regulation pertaining to adoption of emergency measures as requiring council to examine and discuss regulations before them in detail but not requiring that entire regulation, including all of its “whereases” and all of its sections be orally read to council was reasonable. *Id.*

District of Columbia Council's emergency procedure regulations do not require that an emergency regulation be published in District of Columbia register before becoming effective. *Id.*

Minimum wages

Public hearing preliminary to revision of Minimum Wage and Industrial Safety Board's order with regard to persons employed in hotel, restaurant and allied occupations was not a “contested case” within purview of notice provisions of this chapter. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A.2d 294).

Rulemaking

Interpretation or implementation by taxing authorities of words “full and true value” by changing debasement factor for taxation of single-family residences from 55 percent of estimated market value to 60 percent is, within meaning of this chapter, “rulemaking” such as to require publication of notice despite contention that change was part of effort to equalize District of Columbia tax assessments as required by Constitution. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A. 2d 848).

§ 1-1506. Filing and publishing of rules.

(a) Each agency, within thirty days after the effective date of this chapter, shall file with the Mayor a certified copy of all of its rules in force on such effective date.

(b) The Mayor shall keep a permanent register open to public inspection of all rules.

(c) Except in the case of emergency rules, each rule adopted after the effective date of this chapter

by the Mayor or by any agency, shall be filed in the office of the Mayor. No such rule shall become effective until after its publication in the District of Columbia Register, nor shall such rule become effective if it is required by law, other than this chapter, to be otherwise published, until such rule is also published as required in such law. (Oct. 21, 1968, Pub. L. 90-614, § 7, 82 Stat. 1207; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(z)-(bb), 22 DCR 2053.)

AMENDMENT

1975—Act Oct. 8, 1975, D.C. Law 1-19, amended section by substituting “Mayor” for “Commissioner” and “Commissioner or Council”.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-808.

NOTES TO DECISIONS

Publication

Whatever rule is used in District of Columbia to determine eligibility for a license to carry a handgun, it must be adopted, published, and applied according to law, and remain consistent with congressional policy. *A. F. Jordan, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 315 A.2d 153).

Fact that certain of the police regulations governing applications for license to carry concealed weapon in District of Columbia had not been compiled and published as required by statute did not require blind issuance of such a license to petitioner, who failed to satisfy such regulations. *Id.*

A police regulation of the District of Columbia pertaining to equal employment opportunities even if not published in a compilation was properly published where a special edition of the District of Columbia Register incorporated District of Columbia police regulations and such regulations were available for purchase at District of Columbia publications office. *D.C. Human Relations Commission v. National Geographic Society* (1973, 475 F. 2d 366, 154 U.S. App. D.C. 255).

§ 1-1507. Compilation of rules.

(a) As soon as practicable after the effective date of this chapter, the Mayor shall have compiled, indexed, and published in the District of Columbia Register all regulations adopted by the District of Columbia Council and rules adopted by the Mayor and District of Columbia Council and each agency and in effect at the time of such compilation. Such compilations shall be promptly supplemented or revised as may be necessary to reflect new regulations and rules and changes in regulation¹ and rules.

(b) Compilations shall be made available to the public at a price fixed by the Mayor.

(c) The Mayor must publish the first compilation required by subsection (a) of this section within one year after the effective date of this chapter and no regulations adopted by the District of Columbia Council nor rule adopted by the Mayor or by an agency before the date of such first publication which has not been filed and published in accordance with this chapter and which is not set forth in such compilation shall be in effect after one year after the effective date of this chapter.

¹ So in original. Probably should be “or”.

¹ So in original, probably should be “regulations”.

(d) Repealed. Oct. 8, 1975, D.C. Law 1-19, title II, § 203, 22 DCR 2058.
(Oct. 21, 1968, Pub. L. 90-614, § 8, 82 Stat. 1207; Aug. 21, 1974, Pub. L. 93-379, § 5(a), 88 Stat. 483; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(cc)-(ee), title II, § 203, 22 DCR 2053, 2058.)

CODIFICATION

Section 203 of Act Oct. 8, 1975, D.C. Law 1-19, provided for the repeal of section 7 of the District of Columbia Administrative Procedure Act (§ 1-1506), relating to the District of Columbia Municipal Code. Since section 1-1506 does not have a subsec. (d) and this section relates to the Municipal Code, section 203 was executed to this section of the Code as the probable intent of the Council.

AMENDMENTS

1975—Subsec. (a). Section 102(cc) of Act Oct. 8, 1975, D.C. Law 1-19, amended subsec. (a) by (A) inserting the words “regulations adopted by the District of Columbia Council and” between the words “all” and “rules”; (B) striking out “Commissioner” and inserting in lieu thereof “Mayor”; (C) striking out “Commissioner and Council” and inserting in lieu thereof “Mayor and District of Columbia Council”; (D) inserting the words “regulations and” between the words “new” and “rules”; and (E) inserting the words “regulation and” between the words “in” and “rules”.

Subsec. (b). Section 102(dd) of such Act amended subsec. (b) by striking out “Commissioner” and inserting in lieu thereof “Mayor”.

Subsec. (c). Section 102(ee) of such Act amended subsec. (c) by (A) striking out “Commissioner” and inserting in lieu thereof “Mayor”; (B) inserting the words “regulations adopted by the District of Columbia Council nor” between the words “no” and “rule”; and (C) striking out “Commissioner or by the Council” and inserting in lieu thereof “Mayor”.

Subsec. (d). Section 203 of such Act repealed subsec. (d) which related to the codification of regulations in the Municipal Code.

1974—Aug. 21, 1974, Pub. L. 93-379, added subsec. (d).

EFFECTIVE DATES OF 1975 AMENDMENTS

For title I of Act Oct. 8, 1975, D.C. Law 1-19, see note under § 1-1501.

For title II of Act Oct. 8, 1975, D.C. Law 1-19, see note under § 1-1601.

CERTAIN RULES NOT GIVEN RENEWED EFFECT BY 1975 AMENDMENTS, D.C. LAW 1-19

Section 103(b) of Act Oct. 8, 1975, D.C. Law 1-19, provided: “The amendments [to this section] made by subsections (cc), (dd) and (ee) of section 102 of this Title shall not give renewed effect to any rule (as defined by subsection 6 of section 3 of the District of Columbia Administrative Procedure Act [§ 1-1502] before the effective date of this act) which was not compiled, indexed and published on or before October 21, 1970.”

NOTES TO DECISIONS

Publication

A police regulation of the District of Columbia pertaining to equal employment opportunities even if not published in a compilation was properly published where a special edition of the District of Columbia Register incorporated District of Columbia police regulations and such regulations were available for purchase at District of Columbia publications office. *D.C. Human Relations Commission v. National Geographic Society* (1973, 475 F. 2d 366, 154 U.S. App. D.C. 255).

§ 1-1508. Declaratory orders.

On petition of any interested person, the Mayor or an agency, within their discretion, may issue a declaratory order with respect to the applicability of any rule, regulation, Council act or resolution, or statute enforceable by them or by it, to terminate a controversy (other than a contested case) or to remove uncertainty. A declaratory order, as provided in this section, shall be binding between the Mayor

or the agency, as the case may be, and the petitioner on the state of facts alleged and established, unless such order is altered or set aside by a court. A declaratory order is subject to review in the manner provided in this chapter for the review of orders and decisions in contested cases, except that the refusal of the Mayor or of an agency to issue a declaratory order shall not be subject to review. The Mayor and each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. (Oct. 21, 1968, Pub. L. 90-614, § 9, 82 Stat. 1207; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(ff), 22 DCR 2054.)

AMENDMENT

1975—Act Oct. 8, 1975, D.C. Law 1-19, amended section by substituting “Mayor” for “Commissioner or Council” and “Commissioner and the Council”; and by inserting “, regulation, Council act or resolution,” immediately after “the applicability of any rule”.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

NOTES TO DECISIONS

Exclusive remedy

Exclusive remedy of petitioner, which was denied exemption as an institution and assessed taxes due by the District of Columbia Department of Finance and Revenue, Property Assessment Division and which then sought review in the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act, lay in the Tax Division of the Superior Court. *The Washington Theater Club, Inc. v. District of Columbia Department of Finance and Revenue, Property Assessment Division* (D.C. App. 1973, 302 A. 2d 231; cert. denied 94 S. Ct. 63, 414 U.S. 831).

Judicial review

Refusal of Minimum Wage and Industrial Safety Board to issue declaratory order requested by employer was not subject to review. *Sonderling Broadcasting Corporation v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 315 A.2d 828).

§ 1-1509. Contested cases.

(a) In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the Mayor or the agency determine that the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. Unless otherwise required by law, other than this chapter, any contested case may be disposed of by stipulation, agreed settlement, consent order, or default.

(b) In contested cases, except as may otherwise be provided by law, other than this chapter, the proponent of a rule or order shall have the burden of proof. Any oral and any documentary evidence may be received, but the Mayor and every agency shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Where any decision of the Mayor or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in

the record, any party to such case shall on timely request be afforded an opportunity to show the contrary.

(c) The Mayor or the agency shall maintain an official record in each contested case, to include testimony and exhibits, but it shall not be necessary to make any transcription unless a copy of such record is timely requested by any party to such case, or transcription is required by law, other than this chapter. The testimony and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for order or decision. No sanction shall be imposed or rule or order or decision be issued except upon consideration of such exclusive record, or such lesser portions thereof as may be agreed upon by all the parties to such case. The cost incidental to the preparation of a copy or copies of a record or portion thereof shall be borne equally by all parties requesting the copy or copies.

(d) Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision adverse to a party to the case (other than the Mayor or an agency) shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision, who, in such case, shall personally consider such portions of the exclusive record, as provided in subsection (c) of this section, as may be designated by any party.

(e) Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision and order and accompanying findings and conclusions shall be given by the Mayor or the agency, as the case may be, to each party or to his attorney of record. (Oct. 21, 1968, Pub. L. 90-614, § 10, 82 Stat. 1208; Oct. 8, 1975, D.C. Law 1-19, title I, § 102 (gg)-(kk), 22 DCR 2054.)

AMENDMENT

1975—Act Oct. 8, 1975, D.C. Law 1-19, amended section by substituting "Mayor" for "Commissioner or Council", "Commissioner and Council", and "Commissioner".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-1236, 47-1567g.

NOTES TO DECISIONS

Burden of proof

While in some circumstances, a petitioner seeking to establish that administrative agency failed to distribute to him funds properly his might have burden of proof, where two of the three petitioning operators of vending stands at District of Columbia hospital were not notified of change in allocation of income until some four years

after it occurred and subsequently their request for hearing was not honored for some two and one-half years, elementary fairness required that at the further hearing below the affirmative action taken by Department of Human Resources in reallocating vending machine income be regarded as the order under consideration, thus placing burden of proof upon Department to supply substantial evidence in support of its action. *M. E. Perry et al. v. District of Columbia Department of Human Resources* (D.C. App. 1974, 326 A.2d 249).

If, on remand, Department of Human Resources failed to meet its burden of supplying substantial evidence in support of its action in reallocating income of operators of vending stands at District of Columbia Hospital, principal task of hearing officer would be to make accurate determination of amount by which operators were underpaid. *Id.*

Contested case

Driver's license revocation proceeding is a "contested case" and, therefore, is controlled by this chapter. *A. Quick v. Department of Motor Vehicles of the District of Columbia* (D.C. App. 1975, 331 A.2d 319).

Evidence

In driver's license revocation proceedings, motorist was entitled to opportunity to rebut any inaccuracy in his traffic record or to show that traffic record was not relevant or material or was otherwise admissible. *A. Quick v. Department of Motor Vehicles of the District of Columbia* (D.C. App. 1975, 331 A.2d 319).

Final decision

Decision of Board of Zoning Adjustment on application for special exception must not be controlled by head count as in a political election, but by evidence adduced as it relates to requirements for special exception. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A.2d 282).

Findings of fact

Findings of Commission on Human Rights, which dismissed tenant's complaint charging that attempt to evict him constituted discriminatory retaliation, were not sufficiently specific to satisfy requirements of this section, which are to effect that Commission's order must contain findings of fact consisting of a concise statement of conclusions on each contested issue of fact, merely on basis of assertion that when Commission's findings are read together with relevant testimony adduced at hearing, there can be no doubt about basis of Commission's ruling. *G. Miller, Jr. v. District of Columbia Commission on Human Rights* (D.C. App. 1975, 339 A.2d 715).

Board of Zoning Adjustment's findings of fact which were devoid of any delineation of factors weighed in reaching its conclusions of law thereby precluding determination on review as to which factors or considerations influenced Board's decision are inadequate and require remand to Board for proper entry of findings of fact and conclusions of law. *E. A. Shay et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 334 A.2d 175).

Board of Appeals and Review with regard to order of Police and Firemen's Retirement and Relief Board involuntarily separating member of police department from the department for disability not contracted in or aggravated by performance of duty had to make basic findings which were supported by substantial evidence in record before stating ultimate facts and conclusions and there had to be a demonstration in the findings of a rational connection between the facts found and the choice made. *M. E. Brewington v. District of Columbia Board of Appeals and Review* (D.C. App. 1973, 299 A.2d 145).

—Necessity

No written findings were required for disposition of petition for reconsideration of transfer order entered by Alcoholic Beverage Control Board. *Palisades Citizens Association v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 324 A.2d 692).

—Sufficiency

Findings and conclusions of law by Alcoholic Beverage Control Board that there were sufficient off-street parking facilities to serve patrons of applicant for retailer's class C liquor license, that adequate valet service for parking

would be available, that it was not shown that issuance of license would cause increase in trash and litter in the area and that premises were appropriate for issuance of license were supported by substantial evidence. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 323 A.2d 715).

Detailed recitation of testimony and conclusionary statements of District of Columbia Alcoholic Beverage Control Board's view of such testimony as establishing entitlement to retailer's class C alcoholic beverages license were too inadequate to permit review, and remand was necessary. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 316 A.2d 865).

Hearing

Procedure followed in connection with 1964 decision to reallocate vending stand operators' income from vending machines at District of Columbia hospital under vending stand program for the blind was defective in that no opportunity for a hearing was afforded and aggrieved operators were not even informed of the change. *M. E. Perry et al. v. District of Columbia Department of Human Resources* (D.C. App. 1974, 326 A.2d 249).

Issuance of decision or order

"Issuance" of order of administrative agency requires public knowledge of substance of the order. *Palisades Citizens Association v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 324 A.2d 692).

Notice

Operator of vending stand at District of Columbia hospital under vending stand program for the blind was entitled to notice of so important a matter as method by which his income was determined. *M. E. Perry et al. v. District of Columbia Department of Human Resources* (D.C. App. 1974, 326 A.2d 249).

Official notice

Agency must notify the parties to an administrative proceeding that a material fact is being officially noticed so that the parties have an opportunity to rebut that fact. *P. E. Carey v. District Unemployment Compensation Board* (D.C. App. 1973, 304 A.2d 18).

Proposed findings and decision of District Unemployment Compensation Board denying unemployment compensation benefits on ground, inter alia, that claimant was not available for work due to her refusal to accept the aid of the United States Employment Service did not notify claimant that the Board was invoking its prerogative to take official notice of a nonrecord fact consisting of agency record, and thus claimant did not waive her right to contest that fact by failing to request an opportunity to rebut the evidence. *Id.*

Proposed decision

District Unemployment Compensation Board is authorized to provide by a procedural rule that appeals examiner's decision constitutes the proposed findings and decision of the Board and in so doing the Board should at the same time the appeals examiner's decision is issued provide a time limit in which to file with the Board objections to the appeals examiner's decision with a date for oral argument before the Board or any such objections set at that time or at a later date. *P. E. Carey v. District Unemployment Compensation Board* (D.C. App. 1973, 304 A.2d 18).

Reasons for decision

Where Board of Zoning Adjustment's reasons for denying area variance merely quoted pertinent standards in subsection of code without explaining how proposed variance would violate such standards, except for one terse sentence dealing with property owner's alleged self-imposition of hardship, Board's conclusions and findings are insufficient. *A. L. W., Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 338 A.2d 428).

Fact that Administrative Procedure Act expressly imposes a statement of reasons requirement only in contested cases does not bar imposing a requirement of stated reasons in other contexts; The Act was meant only to prescribe minimum procedures. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F.2d 402, 155 U.S. App. D.C. 233).

Transcripts

Decision of Public Service Commission in telephone rate proceeding to furnish transcripts to intervenors at telephone company's expense does not constitute a proper exercise of Commission's delegated powers to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it, since any procedure established by the Commission must conform with the minimum requirements set forth in Administrative Procedure Act (§§ 1-1501 et seq.), and since Commission's rule that transcripts be furnished to intervenors at telephone company's expense was a mere nullity because it contravened express language of this section. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 339 A.2d 710).

On appeal to director of Department of Motor Vehicles from decision of examiner revoking motorist's operator's permit, motorist was entitled to transcript of hearing before the examiner where motorist had made timely request to be provided with transcript and had offered to bear whole cost thereof. *A. Quick v. Department of Motor Vehicles of the District of Columbia* (D.C. App. 1975, 331 A.2d 319).

§ 1-1510. Judicial review.

Any person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Mayor or an agency in a contested case, is entitled to a judicial review thereof in accordance with this chapter upon filing in the District of Columbia Court of Appeals a written petition for review. If the jurisdiction of the Mayor or an agency is challenged at any time in any proceeding and the Mayor or the agency, as the case may be, takes jurisdiction, the person challenging jurisdiction shall be entitled to an immediate judicial review of that action, unless the court shall otherwise hold. The reviewing court may by rule prescribe the forms and contents of the petition and, subject to this chapter, regulate generally all matters relating to proceedings on such appeals. A petition for review shall be filed in such court within such time as such court may by rule prescribe and a copy of such petition shall forthwith be served by mail by the clerk of the court upon the Mayor or upon the agency, as the case may be. Within such time as may be fixed by rule of the court the Mayor or such agency shall certify and file in the court the exclusive record for decision and any supplementary proceedings, and the clerk of the court shall immediately notify the petitioner of the filing thereof. Upon the filing of a petition for review, the court shall have jurisdiction of the proceeding, and shall have power to affirm, modify, or set aside the order or decision complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require. Filing of a petition for review shall not in itself stay enforcement of the order or decision of the Mayor or the agency, as the case may be. The Mayor or the agency may grant, or the reviewing court may order, a stay upon appropriate terms. The court shall hear and determine all appeals upon the exclusive record for decision before the Mayor or the agency. The review of all administrative orders and decisions by the court shall be limited to such issues of law or fact as are subject to review on appeal under applicable statutory law, other than this chapter. In all other cases the review by the court of administrative orders and decisions shall be in accordance with the rules of law which define the scope and limitations of review of administrative

proceedings. Such rules shall include, but not be limited to, the power of the court—

(1) so far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action;

(2) to compel agency action unlawfully withheld or unreasonably delayed; and

(3) to hold unlawful and set aside any action or findings and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations or short of statutory rights; (D) without observance of procedure required by law, including any applicable procedure provided by this chapter; or (E) unsupported by substantial evidence in the record of the proceedings before the court.

In reviewing administrative orders and decisions, the court shall review such portions of the exclusive record as may be designated by any party. The court may invoke the rule of prejudicial error. (Oct. 21, 1968, Pub. L. 90-614, § 11, 82 Stat. 1209; July 29, 1970, Pub. L. 91-358, § 162, title I, 84 Stat. 582; Oct. 8, 1975, D.C. Law 1-19, title I, § 102(II), 22 DCR 2055.)

AMENDMENT

1975—Act Oct. 8, 1975, D.C. Law 1-19, amended section by substituting "Mayor" for "Commissioner or Council".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1156, 2-123, 2-129, 2-312, 2-406, 2-407, 2-492, 2-708, 2-1235, 2-1236, 2-1238, 2-1809, 3-115, 11-722, 11-1525, 17-303, 17-305, 29-417, 35-427, 35-1709, 35-1808, 35-1913, 36-130, 36-409, 40-302, 40-420, 40-1007, 45-1409, 45-1652, 46-303, 46-312, 47-646, 47-2101, 49-402.

NOTES TO DECISIONS

Appealable order

Since order of Minimum Wage and Industrial Safety Board advising employer that it owed and should pay a former employee all commissions earned prior to termination of his employment was enforceable only through criminal prosecution or civil litigation in which issues of fact or law would be determined entirely upon the pleadings and trial record, and not upon the proceedings before the Board, Board's order was not an "appealable order" under the Administrative Procedure Act. *Sonderling Broadcasting Corporation v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 315 A.2d 828).

Contested case

Absent "contested case" status under Administrative Procedure Act (this chapter), Court of Appeals does not have jurisdiction to directly review Zoning Commission's order amending zoning regulations under this section relating to review by Court of administrative orders including power to hold unlawful and set aside findings and conclusions in enumerated instances, as this section does not denote a grant of jurisdiction but is a plain statement of scope of judicial review applicable only to contested cases. *Dupont Circle Citizen's Association et al. v. District of Columbia Zoning Commission* (D.C. App. 1975, 343 A.2d 296).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property, the Commission was acting leg-

islatively and was not subject to the "contested case" provisions of this chapter, with the result that such decision is not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus is subject to review. *W. C. & A. N. Miller Development Company v. District of Columbia Zoning Commission* (D.C. App. 1975, 340 A.2d 420).

Decision of District of Columbia Council, pursuant to the Street Readjustment Act, to close portion of street and, once closed, to authorize the surveyor to convey title to the abutting landowners for development purposes did not constitute a "contested case" within meaning of the Administrative Procedure Act; in determining whether it should close the street the Council was exercising legislative discretion based on primarily legislative facts; also, Council's decision regarding compensation, though primarily adjudicatory, did not fall within the "contested case" definition since it was subject to trial de novo in Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A.2d 310).

Court costs

Length of delay in implementing retroactive payment order of Commissioner of Department of Human Resources justifies an assessment of costs in form of a \$25 filing fee against administrative officers in their official capacity once petition in nature of mandamus to compel agency action was dismissed as moot after officers tardily performed requested action. *B. Dillard et ano. v. J. P. Yeldell et al.* (D.C. App. 1975, 334 A.2d 578).

Joint Committee on Landmarks

Joint Committee on Landmarks of the National Capital as an intergovernmental agency is not an agency of the District of Columbia, and the Court of Appeals lacks jurisdiction to entertain petition for review of its action under this chapter. *J. W. Latimer, Jr., et al. v. The Joint Committee on Landmarks of the National Capital* (D.C. App. 1975, 345 A.2d 484).

Jurisdiction

Practitioner of 14 years, who subsequent to passage of District of Columbia Practice of Psychology Act [§ 2-481 et seq.] applied for license, and whose application was denied by Board of Psychologist Examiners because of his lack of required academic degrees, can properly avail himself of statutory review procedure outlined in the Act in order to prosecute constitutional challenge that the Board's refusal to test his professional competence by some standard other than his academic credentials constituted a violation of fundamental due process, and not limited to interposing his constitutional claims as a defense to criminal proceedings for violating licensure requirement. *J. R. Berger v. Board of Psychologist Examiners* (1975, 521 F.2d 1056, 172 U.S. App. D.C. 396; rem'g 313 A.2d 602).

Congress, by vesting review of Housing Rent Commission decisions in the Superior Court, intended that review provisions of this section not apply to the Commission. *Columbia Realty Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1975, 350 A.2d 120).

Prejudicial error

Record on review established no prejudicial error in Alcoholic Beverage Control Board's compliance with court's prior decision, amounting to substantial compliance with order that Board take further proceedings and enter into record all information which would be relevant and material to statutory criteria for issuance or denial of license and which would be relied upon in any degree by the Board. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 305 A.2d 861).

Scope of review

Provisions of section 11-722 that Court of Appeals has jurisdiction to review orders and decisions of any agency of the District in accordance with Administrative Procedure Act (§§ 1-1501 et seq.), and may review orders or decisions of the Public Service Commission in accordance with Commission's organic act (chapters 1-10 of title 43), carves out only a limited area in which Administrative

Procedure Act is inapplicable to the Commission, that being in the area of standard and scope of review, rather than a wholesale exemption from Administrative Procedure Act coverage. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 339 A. 2d 710).

On review of decision of Board of Zoning Adjustment, Court of Appeals could not consider new issues raised by petitioners concerning parking requirements with respect to operation of private high school but would look to the exclusive record or portions of it designated by parties. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 282).

Substantial evidence rule

On review of order of Board of Zoning Adjustment, Court of Appeals must determine whether findings made are supported and in accordance with reliable, probative and substantial evidence in the whole administrative record and whether conclusions of Board flow rationally from these findings. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 282).

Review by Court of Appeals of decision of Board of Zoning Adjustment is limited to a determination of whether the decision reached follows as a matter of law from facts stated as its basis, and also whether facts so stated have any substantial support in the evidence; if Board's decision follows from its findings and those findings are supported by substantial evidence, Court of Appeals must affirm even though it might have reached another result. *D.C. Stewart et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 305 A. 2d 516).

On petition for review of order of Alcoholic Beverage Control Board granting application for transfer of alcoholic beverage retailer's license, Court of Appeals may not disturb any action of Board in exercise of its statutory powers unless such action is plainly wrong or without support in substantial evidence in administrative record. *R. F. Schiffmann et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A. 2d 235).

Chapter 16.—CODIFICATION AND PUBLICATION OF ACTS, RESOLUTIONS, RULES, AND ORDERS

Sec.

- 1-1601. Definitions.
- 1-1602. Municipal Code—Contents—Publication—Supplements—Distribution—Publication of Council acts and resolutions.
- 1-1603. Statutes-at-Large—Contents—Distribution.
- 1-1604. Enrollment of Council acts and resolutions—Filing.
- 1-1605. Judicial notice.

§ 1-1601. Definitions.

For the purpose of this chapter:

(1) The term "act" shall have the same meaning as is ascribed to it in section 1-122(7).

(2) The term "agency" means any officer, employee, office, department, division, board, commission or other agency of the Government of the District of Columbia including both those which are independent of and those which are subordinate to the Mayor and Council but not including the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

(3) The term "Board of Commissioners" means the Board of Commissioners of the District of Columbia established by Act of June 11, 1878 (20 Stat. 102).

(4) The term "Commissioner" means the Commissioner of the District of Columbia established by subsection (a) of section 301 of Reorganization Plan No. 3 of 1967 (81 Stat. 949).

(5) The term "Council" means the Council of the District of Columbia created by section 1-141(a)

unless the phrase "District of Columbia Council" is used in which event the term shall mean the District of Columbia Council created by subsection (a) of section 201 of Reorganization Plan No. 3 of 1967 (81 Stat. 948).

(6) The term "Council year" means the legislative period of the Council beginning on January 2 of each year and ending on January 1 of the following year.

(7) The term "District of Columbia Code" means the Code of the District of Columbia as provided for in the Act of July 30, 1947 (61 Stat. 638) and any continuations, supplements, or revisions thereof authorized by Act, Congressional resolution, or act.

(8) The term "District of Columbia Register" means the District of Columbia Register mandated by section 1-1504.

(9) The term "Mayor" means the Mayor of the District of Columbia created by section 1-161(a) or his or her designated agent.

(10) The term "rule" means the whole or any part of any Board of Commissioners', Commissioner's, District of Columbia Council's, Mayor's, or agency's statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or designed to describe organization, procedure, or practice requirements.

(11) The term "regulation" shall have the same meaning as the term "rules".

(12) The term "resolution" means a resolution of the Council unless the term "Congressional resolution" is used in which case it shall mean a resolution of the Congress of the United States or either house thereof. (Oct. 8, 1975, D.C. Law 1-19, title II, § 202, 22 DCR 2056.)

REFERENCES IN TEXT

"Act of June 11, 1878", referred to in par. (3), is also known as the Organic Act of 1878. Section 2 of the Act, establishing the Board of Commissioners, is set out as a note under section 1-102 in the main edition.

"Reorganization Plan No. 3 of 1967", referred to in pars. (4), (5) is set out in the Appendix of this title in the main edition.

Provisions of the Act of July 30, 1947, relating to the District of Columbia Code, referred to in par. (7), appear in chapter 3 of title 1, United States Code.

EFFECTIVE DATE

Section 208 of Act Oct. 8, 1975, D.C. Law 1-19, provided: "This Title [enacting this chapter and repealing § 1-1507(d)] shall take effect upon becoming law by operation of subsection (1)¹ of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act (81 Stat. 814) [§ 1-147(c)(1)]."

SHORT TITLE

Section 201 of title II of Act Oct. 8, 1975, D.C. Law 1-19, provided: "This Title [enacting this chapter and repealing § 1-1507(d)] may be cited as the 'District of Columbia Codification Act of 1975'."

§ 1-1602. Municipal Code—Contents—Publication—Supplements—Distribution—Publication of Council acts and resolutions.

(a) On or before January 10, 1976, unless the Council extends such date by resolution, the Mayor shall submit to the Council a proposed District of Columbia Municipal Code which shall contain the following: (1) all rules adopted by the Mayor, the District of Columbia Council, the Commissioner, and

¹ So in original. Probably should be "(c)(1)".

the Board of Commissioners which are in force as of June 30, 1975; (2) all acts and resolutions of the Council which are in the nature of a municipal ordinance which are in force as of June 30, 1975 or which the Council may direct to be included in the proposed District of Columbia Municipal Code; and (3) all rules of each and every agency of the Government of the District of Columbia which are in force as of June 30, 1975. In preparing the proposed District of Columbia Municipal Code the Mayor shall take care to insure that there is included: (A) the full text of each rule, act and resolution in the proposed Code without any incorporation by reference; (B) a citation to the original rule, act, or resolution from which each section of the proposed District of Columbia Municipal Code was taken which citation shall appear in a parallel reference table or tables and/or at the end of that section of the proposed code; (C) a statement in the first portion of each title of the proposed District of Columbia Municipal Code specifying where a certified copy of each original rule, act, or resolution may be obtained; (D) a citation to the applicable section of the District of Columbia Code which each section of the proposed District of Columbia Municipal Code implements or upon which the proposed section is based, if any, which citation shall appear in a parallel reference table or tables and/or at the end of that section of the proposed District of Columbia Municipal Code; and (E) a parallel reference table, indexed by District of Columbia Code section, indicating each section of the proposed District of Columbia Municipal Code which implements or is based upon that section of the District of Columbia Code.

(b) On or before February 27, 1976 the Council shall approve by resolution the District of Columbia Municipal Code after making such editorial additions and revisions as it may deem necessary and that which it approves shall be published, *Provided* That approval by the Council shall not constitute enactment of the Code. The Council may extend by resolution the final date for its revision, approval and/or publication.

(c) From time to time, but no less than once each three months per Council year, the Mayor shall prepare such supplements and/or revisions of the District of Columbia Municipal Code as may be necessary to reflect new rules, acts, and/or resolutions and shall transmit the same to the Council which within forty-five (45) days of its receipt, shall make such editorial additions and revisions by resolution as it may deem necessary after which the supplements and/or revisions shall be published, *Provided* That Council action shall not constitute enactment of the supplements and/or revisions.

(d) The Mayor shall make copies of the District of Columbia Municipal Code and any supplement or revisions thereof available to the public at a reasonable cost in its entirety and by title.

(e) The Mayor shall make available a copy of the entire District of Columbia Municipal Code including revisions and supplements thereto at each regular branch of the District of Columbia Public Library System and to each Advisory Neighborhood Commission which shall be established by the Council.

(f) (1) Unless adopted pursuant to the emergency circumstances provision of section 1-146(a), no Council act or resolution shall be effective unless it has been published in the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Code.

(2) Except where the Council may direct for its acts and resolutions and except for acts and resolutions codified or to be codified in the District of Columbia Code, (A) any rule, act, or resolution which is not published in the District of Columbia Municipal Code at the time of the Code's original publication shall not thereafter be in effect unless it became law after June 30, 1975 and (B) any rule, act, or resolution becoming law after June 30, 1975, which is not published in the District of Columbia Municipal Code within eighteen (18) months of its adoption shall not thereafter be in effect. (Oct. 8, 1975, D.C. Law 1-19, title II, § 204, 22 DCR 2058; Oct. 30, 1975, D.C. Law 1-27, § 4, 22 DCR 2472.)

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-27, amended subsec. (e) by substituting "Advisory Neighborhood Commission" for "Advisory Neighborhood Council".

EFFECTIVE DATE

See note under § 1-1601.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 1-171.

CROSS REFERENCE

Publication and codification of acts of Council becoming law as it directs, see § 1-144.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1605.

§ 1-1603. Statutes-at-Large—Contents—Distribution.

(a) Within forty-five days of the end of each Council year, the Mayor shall compile and publish the District of Columbia Statutes-at-Large which shall include in separate chronological order:

(1) Council acts which become law during that Council year;

(2) Council resolutions adopted during that Council year; and

(3) Mayor's orders issued during that Council year.

(b) The first publication of the District of Columbia Statutes-at-Large shall also contain in a separate part each regulation and resolution of the District of Columbia Council in chronological order.

(c) The Mayor shall make copies of the District of Columbia Statutes-at-Large available to the public at a reasonable cost calculated to cover the costs of its compilation, publication and distribution. (Oct. 8, 1975, D.C. Law 1-19, title II, § 205, 22 DCR 2062.)

EFFECTIVE DATE

See note under § 1-1601.

§ 1-1604. Enrollment of Council acts and resolutions—Filing.

After enactment by the Council, but before any presentation to the Mayor, each act and resolution of the Council shall be set forth on parchment or other such suitable paper. Each parchment or other suitable paper which is an adopted resolution or is an act which becomes law shall be filed with the Archives of the United States not more than five

(5) years after its adoption. (Oct. 8, 1975, D.C. Law 1-19, title II, § 206, 22 DCR 2062.)

EFFECTIVE DATE

See note under § 1-1601.

CROSS REFERENCE

Adoption of acts by Council, see § 1-146.

§ 1-1605. Judicial notice.

All courts within the District of Columbia shall take notice of the acts, rules, and resolutions pub-

lished in the District of Columbia Municipal Code in accordance with this chapter, and said courts shall also take notice of the acts and resolutions published in the District of Columbia Statutes-at-Large to the extent that they are in force in accordance with section 1-1602(f). (Oct. 8, 1975, D.C. Law 1-19, title II, § 207, 22 DCR 2063.)

EFFECTIVE DATE

See note under § 1-1601.

TITLE 1.—ADMINISTRATION, APPENDIX

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REORGANIZATION ORDERS OF THE BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA

REORGANIZATION ORDER NO. 36.—MINIMUM WAGE AND INDUSTRIAL SAFETY BOARD

Reorg. Ord. No. 36, C.O. 302,853/14, June 16, 1953, as amended Sept. 20, 1956, July 14, 1960, Sept. 20, 1960, Jan. 7, 1966, Feb. 7, 1967, and Feb. 1, 1973, ordered that:

* * * * *

PART VI

Payment and collection of wages.—A. The Board shall administer the Act to provide for the payment and collection of wages in the District of Columbia, Public Law 953, 84th Congress, 2d Session (§§ 36.601 to 36.610). This authority shall include, but not be limited to, the following functions:

1. To develop and propose to the Board of Commissioners any regulations that may be necessary.

2. To investigate and hold hearings on any alleged violations, including claims that wages have not been paid in accordance with the act, and that such unpaid wages constitute enforceable claims against employers.

3. In its discretion, upon request of an employee, to take an assignment in trust of wages found by the Board to be due, together with any claim for liquidated damages. Upon such assignment, the Board shall have power to settle and adjust any such claim or claims on such terms as it may deem just or to initiate appropriate legal action.

4. To administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceedings before it.

B. The Board shall administer and enforce the provisions of section 16-584 of the D.C. Code prohibiting the discharge from employment of an employee because of garnishment proceedings, and shall advise employees of their rights and responsibilities under the garnishment laws of the District. The Board is further delegated the authority to issue regulations establishing the maximum amounts of disposable wages earned by employees during pay periods other than weekly pay periods, pursuant to section 16-572(2) of the D.C. Code.

* * * * *

REORGANIZATION ORDER NO. 43.—DEPARTMENT OF INSURANCE

Reorganization Ord. No. 43, G. F. No. 36-000, June 23, 1953, as amended Aug. 28, 1962, Mar. 5, 1965, Aug. 12, 1968, Oct. 15, 1973, and Nov. 6, 1974, ordered that:

* * * * *

PART VIII

A. There is delegated to the Superintendent of Insurance the function, now vested in the Board of Commissioners by the Act of May 17, 1932 (47 Stat. 158, ch. 189, § 35-204, D.C. Code, 1961 ed. [now 1973 ed.]), of granting or denying to insurance companies permission to remove from the District of Columbia the principal office, books, records, and files of such companies.

B. There are delegated to the Superintendent of Insurance the functions vested in the Commissioner of the District of Columbia by the District of Columbia Insur-

ance Placement Act (Title XII, Housing and Urban Development Act of 1968, approved August 1, 1968; Public Law 90-448) [D.C. Code, § 35-1701 et seq.].

The Superintendent of Insurance is hereby authorized to redelegate all or part of such functions as, in his judgment, may be necessary in the interests of efficient administration.

C. The Superintendent of Insurance is authorized to perform the duties and functions vested in the Commissioner of the District of Columbia by the District of Columbia Insurance Guaranty Association Act (Title I of the District of Columbia Insurance Act; Public Law 93-89) [D.C. Code, § 35-1801 et seq.].

D. The Superintendent of Insurance is authorized to perform the duties and functions vested in the Commissioner of the District of Columbia by the District of Columbia Holding Company System Regulatory Act (Pub. L. 93-388) [D.C. Code, § 35-1901 et seq.].

The Superintendent of Insurance is hereby authorized to redelegate all or part of such functions as, in his judgment may be necessary in the interest of efficient administration.

2. The function delegated by this Part may not be redelegated to other officials or employees of the Department of Insurance, and is subject to withdrawal or modification at any time.

REORGANIZATION ORDER NO. 50.—OFFICE OF THE CORPORATION COUNSEL

Reorg. Ord. No. 50, LS 4240-B, June 26, 1953, as amended June 6, 1955, Feb. 10, 1956, Aug. 30, 1956, Oct. 18, 1956, Feb. 4, 1958, Mar. 13, 1958, June 7, 1960, Nov. 3, 1967, Dec. 18, 1967, Oct. 28, 1968, May 25, 1970, Oct. 6, 1970, Oct. 23, 1970, Jan. 25, 1973, and Dec. 28, 1973, ordered that:

* * * * *

PART II

Organization.—The Office of the Corporation Counsel shall be comprised of the following organizational components, responsible for the performance of the functions outlined:

* * * * *

B. [Repealed.]

* * * * *

G. *Special Assignments Division.*—Contains the following sections:

I. *Administrative Law Section.*—Performs all legal work, except litigation in the courts, in connection with the District of Columbia Government personnel matters and in connection with contractual relationships of the District Government with the Federal and State Governments and agencies thereof, as well as with private persons and organizations.

Furnishes legal advice to the various departments, boards, commissions, committees and agencies of the District of Columbia on matters relating to their duties, powers and activities, including the trial of matters arising before boards, commissions, and committees. Collaborates with Civil Proceedings Division in court litigation arising out of any of the foregoing. Prepares formal written opinions upon any of the foregoing matters. Assists in preparing legislation, and comments and reports on

legislation both pending and proposed in relation to any of the foregoing matters.

Performs such additional duties, in the nature of special assignments and otherwise, as are prescribed, from time to time, by the Corporation Council or the Principal Assistant Corporation Counsel.

II. *Public Utilities Section*.—Performs the function of the Corporation Counsel as General Counsel for the Public Service Commission.

Represents and appears for the Public Service Commission in all legal, administrative, and procedural matters affecting the operation and regulation of public utilities in the District of Columbia.

Advises the members of the Public Service Commission on legal, technical and procedural matters relating to their duties and powers.

Reviews and prepares reports upon proposed legislation affecting public utilities operating in the District of Columbia.

III. *Environment & Consumer Section*.—Performs all legal work, including preparation and trial of civil litigation, pertaining to the environment, public health, and consumer protection; assists in appeals and criminal prosecutions pertaining to the environment, public health and consumer protection.

Represents the public interest of the District of Columbia before Federal and State administrative agencies.

Initiates and conducts litigation in various courts to protect the public interests of the District of Columbia.

Assists in preparing legislation pertaining to the environment, public health, and consumer protection.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel, Principal Assistant Corporation Counsel or the Chief, Special Assignments Division.

I. *Special Litigation Division*.—Prepares and tries cases, and performs related legal duties in connection with the following: injuries to wards of the Department of Human Resources; recoupment of monies paid out by that Department in the form of public assistance; matters relating to mental health and mental retardation and the collection of maintenance costs for mentally ill and mentally retarded persons committed at District expense to District institutions; and the transfer of prisoners who becomes mentally ill while serving sentence in a District facility.

Investigates and takes necessary action to collect accounts of mental health patients and District of Columbia General and Glenn Dale Hospital accounts; prosecutes minimum wage and wage collection cases; represents interest of District of Columbia in hospital liens filed by public and private hospitals.

Performs all legal work involved in representing the interests of the District of Columbia in probate and escheat cases. Applies for administration and acts as administrator on behalf of the District of Columbia in any estate in which the assets consist solely of personal property valued at more than \$500.00, but less than \$5,000.00, and in which the District of Columbia is the principal creditor of said estate by reason of services rendered or expenditures made by the District of Columbia. All funds so collected shall be deposited into Miscellaneous Trust Fund Account (by individual estate), to be thereafter disbursed by the Disbursing Officer, Finance Office, upon direction of the Administrator; provided that such disbursements, exclusive of administration expenses, shall be in accordance with the final order of the Superior Court of the District of Columbia.

Prepares and argues cases arising under the Reciprocal Enforcement of Support Act [D.C. Code, § 30-301 et seq.]; prepares and tries civil actions to establish paternity and provide support, civil actions for nonsupport, and proceedings relating to intrafamily offenses.

Assists in preparing legislation pertaining to Special Litigation Division matters.

Performs such additional duties, in the nature of special assignments and otherwise, as are prescribed from time to time by the Corporation Counsel or the Principal Assistant Corporation Counsel.

REORGANIZATION ORDER NO. 55.—DEPARTMENT OF LICENSES AND INSPECTIONS

[Functions as stated in Reorg. Ord. No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order (Organization Action) No. 69-96, dated Mar. 7, 1969, as amended.]

Reorganization Ord. No. 55, L.S. 4263-B, June 30, 1953, as amended Aug. 13, 1953, Dec. 17, 1953, June 30, 1954, Oct. 26, 1954, Aug. 11, 1955, Jan. 31, 1956, July 10, 1956, Oct. 2, 1956, Oct. 16, 1956, June 13, 1957, Nov. 27, 1957, July 22, 1958, June 1, 1960, Feb. 21, 1961, Nov. 7, 1961, Dec. 4, 1962, May 12, 1964, June 17, 1965, Mar. 16, 1967, Feb. 28, 1969, Oct. 3, 1973, ordered that:

PART III

Organization and functions.—There are established in the Department of Licenses and Inspections the following organizational components, responsible for the performance of the functions outlined below consistent with the purpose specified above:

G. [Rescinded. See Organization Order No. 40.]

ORGANIZATION ORDERS OF THE BOARD OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA

Org. Ord.

Nos.

137. Public Welfare Advisory Committee on Day Care [Amended and redesignated as Org. Ord. No. 201].
146. Relocation Advisory Committee [Rescinded and replaced by Org. Ord. No. 39].

ORGANIZATION ORDER NO. 105.—DEPARTMENT OF MOTOR VEHICLES

Organization Ord. No. 105, 55-885, May 17, 1955, as amended June 10, 1958, Sept. 9, 1958, May 19, 1959, Nov. 7, 1961, June 24, 1965, and Oct. 12, 1973, ordered that Organization Order No. 105, C.O. No. 65-847, June 24, 1965, be replaced and rescinded as follows:

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

1. *Establishment*.—There is hereby established in the Government of the District of Columbia a Department of Motor Vehicles, headed by a Director, who is authorized to perform and is responsible for the functions prescribed herein. He further is authorized to redelegate all or part of each such function as, in his judgment, is in the interest of effective, efficient and economical administration. In the performance of those functions for which he is responsible, the Director is authorized to establish such organizational components with such specified functions as he deems appropriate.

2. *Purpose*.—To protect lives and property and promote highway safety in the District of Columbia in accordance with established motor vehicle and related laws, regulations, District objectives and public policy.

3. *Functions*.—The Director of the Department of Motor Vehicles shall:

a) Develop for the approval of the Mayor-Commissioner legislation regulations, programs and policies for improving highway safety; for regulation of vehicles, vehicle owners, operators and dealers, and pedestrians; and for provision of related services.

b) Act as "Governor's (Mayor-Commissioner's) Representative" to plan, coordinate and administer a District-wide highway safety program, in accordance with provisions of the Highway Safety Act of 1966, as amended (23 USC 401 et seq.), and advise and assist the Mayor-Commissioner in matters of highway safety.

c) Represent the District in organizations that initiate or influence national highway safety policies, vehicle safety standards, and traffic regulations; and in relations with other jurisdictions, agencies and organizations in matters relating to administration of departmental functions; and in negotiation of reciprocal agreements and compacts with other jurisdictions, pursuant to a provision of the District of Columbia Traffic Act of 1925, as amended (D.C. Code 40-303).

d) Administer non-resident employer process service provisions of the District of Columbia Unemployment Compensation Act, as amended (D.C. Code 46-305).

e) Direct activities of the District's Civil Defense Emergency Transportation Service.

f) Conduct traffic safety education programs, and develop and administer public support projects and activities to achieve District and departmental objectives and promote highway safety throughout the Metropolitan Area.

g) Conduct research and development activities directed toward improving highway safety in the District of Columbia (with related contributions to national highway safety), increasing the effectiveness of departmental functions, and for such other purposes as the Mayor-Commissioner may direct.

h) Establish driver qualification standards and conduct programs for driver licensing and control.

i) Administer provisions of the Owner's Financial Responsibility Act (D.C. Code 40-417 to 498) and the Motor Vehicle Safety Responsibility Act (D.C. Code 40-417 et seq.).

j) Conduct programs for vehicle titling and registration, establish criteria for proof of vehicle ownership, and exercise regulatory control of motor vehicle and trailer dealers.

k) Establish vehicle condition safety standards and conduct vehicle inspection programs.

l) Establish public-vehicle-for-hire driver qualification standards, and conduct programs for licensing and control of drivers of public-vehicle-for-hire pursuant to Commissioner's Order No. 69-670, paragraph 2, dated December 24, 1969.

m) Administer public-vehicle-for-hire licensing and insurance programs as agent for the Public Service Commission pursuant to Commissioner's Order No. 69-670, paragraph 3, dated December 24, 1969, and Public Service Commission Order Number 5415 dated December 24, 1969.

n) Conduct programs to ensure public compliance with departmental Orders and with departmental requirements related to the performance of its functions.

o) Operate and maintain permanent and seasonal special-purpose buildings and facilities—such as the District's vehicle safety inspection stations.

p) Develop and justify annual and special budgets; conduct a variety of administrative and automated data processing support services and a management improvement program; and administer management and technical activities affecting the collection of District revenue and the control of departmental resources, including appropriations, special funds, and grant and contract funds.

4. *Transfer.*—There are hereby transferred to the Department of Motor Vehicles all positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available, relating to above functions, assigned to the Department as it existed immediately prior to the effective date of this Order.

5. *Rescission.*—Organization Order No. 105 (Commissioner's Order No. 65-847), dated June 24, 1965, is hereby replaced and rescinded.

ORGANIZATION ORDER NO. 112.—BOARD OF APPEALS AND REVIEW

Organization Ord. 112, 55-1500, dated Aug. 11, 1955, as amended July 12, 1960, Aug. 9, 1960, Dec. 15, 1960, Apr. 25, 1961, Mar. 15, 1962, Dec. 4, 1962, Apr. 13, 1965, Mar. 7, 1968, Aug. 6, 1968, Sept. 24, 1971, and Dec. 12, 1973, ordered that:

A. *Establishment and Purpose.*—Pursuant to the authority vested in the Commissioner under Reorganization Plan No. 3 of 1967 (D.C. Code, 1967, Title I, Administration, Appendix), the Board of Appeals and Review (hereinafter referred to as the "Board") is hereby established as an administrative agency in the District of Columbia Government to provide a final administrative remedy in cases under its jurisdiction.

B. *Composition, Qualifications, Tenure of Board Members.*—

1. The Board shall consist of twenty-five members appointed by the Commissioner, of which:

a. Eight shall be full-time employees of the District of Columbia Government, of Grade GS-13 or higher (here-

inafter referred to as "District Members"), but no such member shall be an employee of the Office of the Corporation Counsel. District Members shall receive no additional compensation for work performed by virtue of their appointment or service as members of the Board.

b. Sixteen shall be intermittent employees of the District of Columbia (hereinafter referred to as "Public Members"), each of whom resides in said District or owns in his own name real property therein, eight of whom shall have been admitted to the practice of law before the District of Columbia Court of Appeals and shall have had at least five years of experience in the active practice of law in the District of Columbia (hereinafter referred to as "Legal Members").

c. One shall be the Chairman of the Board, who shall possess such qualifications as the Commissioner deems appropriate for the position which shall be full-time and salaried.

2. The Commissioner shall appoint a Vice-Chairman who shall exercise the powers, authorities and functions of the Chairman whenever the Chairman is unavailable. The Vice-Chairman may be any member of the Board, or may be a District of Columbia official not otherwise a member of the Board.

3. With the exception of the Chairman, and the Vice-Chairman in the event that he is not otherwise a member of the Board, the term of each member of the Board shall be three years. Every vacancy shall be filled only for the unexpired portion of the term. After the expiration of his term, each member shall continue to serve until his successor has been appointed and has taken the oath of office. Members shall be appointed and may be removed by the Commissioner, but no person who has served continuously for six years or more as a member of the Board shall be reappointed as a member until the expiration of one year from the end of such service.

4. Every member of the Board shall take the following oath of office:

"I, _____, having been duly appointed by the Commissioner as a member of the Board of Appeals and Review, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of the said Board to the best of my ability without fear or favor; that I will administer justice without respect to persons, or to their race, creed, color, national origin, religion, sex, or age; that I will do equal right to the poor and to the rich; and, that I will well and faithfully discharge said duties, so help me God."

C. *Organization of the Board.*—1. The Board shall consist of a Chairman, Vice Chairman, Hearing Committees, and such administrative, secretarial, stenographic and clerical positions and personnel as may be appropriate for the performance of the functions of the Board.

2. *Hearing Committees.*

a. Three Member Hearing Committees. Except as provided otherwise herein, each Hearing Committee shall consist of three members of the Board. One such member shall be a Legal Member, or in the alternative, shall be the Chairman. The Legal Member or the Chairman shall be the Presiding Member of the Committee. One such member shall be a District Member of the Board, but no such District Member shall be a member of said Committee which hears on appeal from an action by an officer or employee or any department or office in which he is employed. Except in the case of a Single Member Hearing Committee as designated in C, 2, b herein, a quorum of a Hearing Committee shall be all three members thereof, but decisions and other actions of the Committee may be by majority vote.

b. Single Member Hearing Committees.

[1] In "Class A cases," and in "Class B cases," as designated in Section D herein, the Chairman may designate and assign to Single Member Hearing Committees such cases as he deems, in the public interest, to require a decision on an expedited or emergency basis. Such Committee shall consist of a Legal Member, or in the alternative, the Chairman.

[2] Upon the agreement by and between the Chairman and all the parties to a case before the Board, not assigned to a Single Member Hearing Committee, such case may be

heard by a Single Member Hearing Committee consisting of a Legal Member, or in the alternative, the Chairman.

D. Functions of the Board.—

1. Except as provided otherwise herein, all powers, functions, and authority of the Board shall be exercised by the Hearing Committees of the Board, whose decisions and other actions shall be deemed actions of the Board.

2. Subject to the provisions of the second paragraph of paragraph II(a) of Reorganization Order No. 50, as amended, each Hearing Committee shall exercise the following functions:

a. Conduct proceedings, make decisions and take other action as is appropriate in cases assigned to it, to include sustaining, reversing, or modifying the action from which an appeal is taken, and when appropriate, dismissing the appeal or remanding the case for further consideration. Such proceedings shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, sections 1-1501 to 1-1510).

b. File with the Chairman correspondence, pleadings, documents, findings of fact, conclusions of law, and decisions or other actions which it takes in the cases before it.

c. When it desires in any case before it, request through its Presiding Member, directly of the Corporation Counsel, his opinion in any question of law, or his assistance in putting into proper form its findings of fact, conclusions of law, and decision.

d. Affirmatively respond to the request of the Chairman to expedite or to hear and decide on an emergency basis any case designated to it by the Chairman.

e. In appropriate cases, request the Chairman to issue subpoenas or to direct a witness to testify, as provided for in F, 3 herein.

f. Through its Presiding Member, administer oaths to witnesses testifying in cases before it as provided in F, 3 herein.

3. Subject to the provisions of paragraph II(a) of Reorganization Order No. 50, as amended, the Chairman shall exercise the following functions:

a. Supervise the flow, and insure the prompt disposition of cases before the Board, and expedite or have heard and decided on an emergency basis, those cases which he deems it appropriate to do so.

b. Designate the members of the Hearing Committees. Where Single Member Hearing Committees are utilized under C, 2b, (2) herein, designate the members of such Committees only after the agreement thereunder to use such Committees has been entered into, and without prior disclosure of the members to be so designated.

c. Act for the Board in matters arising prior to hearings before the Hearing Committees.

d. Upon the request of the Presiding Member of a Hearing Committee, but only when he deems it appropriate, require the attendance and testimony of witnesses, and the production of documents, as provided for in F, 3 herein.

e. Administer oaths to witnesses in cases before the Board as provided in F, 3 herein.

f. Transmit to the parties in cases before the Board all appropriate correspondence, pleadings, documents, and actions of the Board.

g. Be responsible for the overall administrative, fiscal and housekeeping functions of the Board.

h. Perform any and all other functions which the Commissioner may assign to him.

E. Jurisdiction of the Board.—

1. The Board, through the Hearing Committees, shall consider appeals from decisions in the following types of cases in which error is alleged, and make a final administrative determination sustaining, reversing, or modifying the action from which the appeal is taken or, when appropriate, dismiss the appeal or remand the case for further consideration:

Class A cases. Appeals from decisions of the Director of the Department of Economic Development under the Housing Regulations; and, appeals by persons directed by responsible officials of such Department to act or refrain from acting in accordance with inspectional or regulatory requirements (excluding dangerous and unsafe structures and excavations).

Class B cases. The Board, in its consideration of appeals from decisions of the Director of the Department

of Economic Development under the Housing Regulations and under Section 640 of Article 6 of the Building Code may in its discretion grant variances as authorized by the Housing Regulations and Section 640 of Article 6 of the Building Code and shall, in addition, consider and make final decisions on cases under consideration for the granting of a variance as authorized under the Housing Regulations and under Section 640 of Article 6 of the Building Code that may be referred without final determination by the Director of the Department of Economic Development.

Class C cases. Appeals submitted by applicants for or holders of licenses, permits and certificates, from actions taken by responsible officials of the Department of Economic Development with respect to denial, suspension or revocation of a license, permit, or certificate: Provided, that in any case in which a license may issue only with the approval of the Chief of Police, the Board of Appeals and Review shall have authority to set aside the decision of the Department of Economic Development whenever such decision is based upon an adverse recommendation of the Chief of Police, which recommendation the Board of Appeals and Review finds is arbitrary, capricious, or not supported by substantial evidence.

Class D cases. Applications for review, pursuant to the Motor Vehicle Safety Responsibility Act of the District of Columbia (D.C. Code, Sections 40-401 through 40-498), of orders issued or actions taken under such Act.

Class E cases. Appeals from decisions of the Police and Firemen's Retirement and Relief Board filed with the Board of Appeals and Review on or before May 31, 1974, after which date the decisions of the Police and Firemen's Retirement and Relief Board will constitute final administrative action.

Class F cases. Such other matters as the Commission may assign to the Board.

2. The Board shall not have jurisdiction to review and comment upon the recommendation of any agency subject to subsequent agency action, and shall not have jurisdiction to render advisory opinions to such agency.

F. Procedure.—

1. Except as provided otherwise herein, the Corporation Counsel shall prescribe and amend the rules governing the practice and procedure of the Board, including the establishment of the limitations where not otherwise set forth, and the method by which appeals are to be noted with the Board.

2. Upon the request of an agency from whose decision or other action, or proposed decision or other action, an appeal from which is within the jurisdiction of the Board, the Corporation Counsel or one of his assistants may represent such agency before the Board.

3. The Board, through the Chairman, shall have the power to require, by the issuance of subpoena or otherwise, the attendant and testimony of persons and the production of books and papers, in any and all matters within its jurisdiction. Upon the failure of any such person to attend as a witness when subpoenaed or otherwise directed by the Chairman, or to testify or to produce documents when subpoenaed or otherwise directed by the Chairman, the Chairman shall have the power to refer the respective matter to the Superior Court of the District of Columbia for such relief as the Court may deem appropriate. The Board, through its Chairman or through the presiding member of any Hearing Committee, shall have the power to administer oaths to witnesses testifying in cases before it.

4. Where the Board has not decided an appeal from the denial of a license application by the end of the license year for which the application was made, and the appellant has made timely application for a license for the new license year, the pending appeal shall not become moot at the end of the license year for which the earlier application was made, but shall be deemed also to be an appeal from the denial of an application for a license for the new license year.

G. *Repeal of Previous Orders.*—All Commissioner's Orders, and other regulatory provisions promulgated by the Commissioner, or parts thereof in conflict with the provisions herein to the extent of such conflict herewith, are hereby repealed.

ORGANIZATION ORDER NO. 137.—PUBLIC WELFARE ADVISORY COMMITTEE ON DAY CARE

Organization Order No. 137, 63-999, Apr. 18, 1963, as amended May 14, 1963, which established a Public Welfare Advisory Committee on Day Care, was amended in its entirety and redesignated as Organization Order No. 201, dated Apr. 18, 1975.

ORGANIZATION ORDER NO. 146.—RELOCATION ADVISORY COMMITTEE

Organization Order No. 146, 65-339, Mar. 16, 1965, as amended Dec. 21, 1965, and May 19, 1966, which established a Relocation Advisory Committee, was rescinded and replaced by Organization Order No. 39, dated June 26, 1973.

ORGANIZATION ORDERS OF THE COMMISSIONER OF THE DISTRICT OF COLUMBIA

Org. Ord.
Nos.

12. Police and Firemen's Retirement and Relief Board [Repealed and replaced by Org. Ord. No. 48].
15. District of Columbia Commission on Academic Facilities [Rescinded and replaced by Org. Ord. No. 205].
16. Commission on the Arts and Humanities [Repealed].
20. Advisory Committee on the Aging [Abolished].
28. Manpower Advisory Committee [Redesignated as Org. Ord. No. 44].
34. Mayor's Committee on Nelsen Commission Coordination [Rescinded].
36. Mayor's Policy Coordination Group.
37. Space Management—Space Review Committee.
38. Commission on the Status of Women.
39. Relocation Advisory Committee.
40. Office of Consumer Affairs.
41. Cooperative Area Manpower Planning System (CAMPS) Staff.
42. Office of Petroleum Allocation—Departmental Energy Group—Citizens Fuel Conservation Committee.
43. State Advisory Committee for Drug Abuse.
44. Manpower Services Planning Advisory Committee.
45. Office of Housing and Community Development.
46. District of Columbia Department of Manpower.
47. Interdepartmental Committee on Adult Literacy.
48. Police and Firemen's Retirement and Relief Board.
49. Board of Consumer Goods Repair Services.
50. Office of Budget and Management Systems—Municipal Planning Office.
51. Office of Civil Defense.

ORGANIZATION ORDER NO. 2.—EXECUTIVE OFFICE OF THE COMMISSIONER

(Organization Ord. No. 2, Commissioner's Order No. 67-23, Dec. 13, 1967 as further amended Mar. 7, 1968, June 6, 1968, Sept. 30, 1968, Jan. 12, 1970, Mar. 23, 1970, Oct. 25, 1972, Nov. 20, 1972, Nov. 1, 1973.)

PART III

Mayor-Commissioner's Correspondence Unit.—There is also established in the Executive Office of the Commissioner, the Mayor-Commissioner's Correspondence Unit, heretofore a part of the staff of the Secretariat, and there is hereby transferred to the Executive Office of the Commissioner the functions including the duties, powers and authorities of all officers and employees assigned to, and all positions, personnel, property, records and expended balances of appropriations, allocations and other funds available to the Secretariat for this purpose, as it existed immediately prior to the effective date of this Order.

PART IV

C. Personnel Office.

1. The Personnel Office is responsible for:

b. With respect to all departments of the District of Columbia Government, but consistent with the authority vested by law in the Commissioner, D.C., developing and administering all aspects of a complete personnel management program, including, but not limited to, those relating to position classification, pay administration;

employment and placement; separations; training; employee relations; employee management cooperation; performance evaluation; safety; disability compensation; equal employment opportunity programs; special economic opportunity programs; retirement; incentive awards; records and reports. With respect to the responsibility assigned herein the Personnel Officer is delegated specific authority to:

(11) Exercise centralized administrative direction and control of the District Government Unemployment Compensation Program, including the establishment of uniform agency procedures relative thereto, which shall be in consonance with procedures utilized by the District Unemployment Compensation Board in its administration of the District of Columbia Unemployment Compensation Act.

ORGANIZATION ORDER NO. 9.—CONTRACTING OFFICERS

(Organization Ord. No. 9, Commissioner's Order No. 68-399, June 6, 1968, as amended Dec. 4, 1968, Apr. 24, 1969, Nov. 14, 1969, Mar. 16, 1971, Aug. 5, 1971, Jan. 31, 1972, Apr. 18, 1972, July 7, 1972, June 4, 1974, Feb. 5, 1975, Dec. 19, 1975.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, IT IS ORDERED:

Organization Order No. 9 of June 6, 1968, as subsequently amended, is hereby further amended and reissued in its entirety to read as follows:

PART I

Appointment of contracting officers.—A. The officials occupying each of the following positions are hereby appointed Contracting Officers for the District of Columbia, subject to all applicable laws, rules, regulations, policies, standards, systems and procedures, and such instructions as the Mayor or his designee may from time to time give:

- (1) Director, Department of General Services;
- (2) Director, Department of Transportation;
- (3) Director, Department of Environmental Services;
- (4) Director, Department of Economic Development;
- (5) Chairman of the Board for the Condemnation of Insanitary Buildings;
- (6) Director, Department of Human Resources;
- (7) Director, Department of Corrections;
- (8) Director, Office of Youth Opportunity Services; and
- (9) Director, Department of Manpower.

B. Each Contracting Officer is authorized to redelegate such of the authorities herein delegated to him to other officials under his administrative control to act as Contracting Officers for such purposes and subject to such limitations as he may designate in writing, a copy of which writing shall be filed in his office and in the office of the Director of Finance and Revenue. The Contracting Officer designated in Part I, A(1) is authorized to redelegate portions of the authorities herein delegated to him to departments and agencies as in his judgment are warranted for reasons of administrative efficiency and effective management subject to such criteria, standards, and restrictions as he may determine.

PART II

Authority of contracting officers.—A. Each Contracting Officer is authorized to enter into and administer contracts and issue change orders under such contracts on behalf of the District of Columbia, including approval of performance bonds when required, as follows:

- (1) The Contracting Officer designated in Part I, A(1) with respect to (a) all supplies, materials, equipment and services for all departments and agencies of the District except as provided elsewhere herein; (b) the acquisition by purchase of real property, demolition of improvements on real property, managing, leasing, outleasing or disposing of real property, and the installation of snack bars and vending facilities on District-owned or leased properties except as provided elsewhere herein; (c) the sale of surplus personal property, supplies, equipment and scrap materials, except as provided elsewhere herein.

(2) Each Contracting Officer designated in Part I, A(1); Part I, A(2); Part I, A(3); Part I, A(4) and Part I, A(6) with respect to (a) consulting, architect-engineer and construction contracts (including alteration and repair) determined to be necessary for the proper performance of all types or classes of work now and hereafter placed under his supervision; and (b) supplies, materials or equipment, the furnishing of services, or the performance of construction, in amounts not exceeding \$50,000 when the public exigencies require the immediate delivery, furnishing or performance of the same, PROVIDED that a certification as to the nature of the emergency and justification for such purchase or contract be made in writing and filed with the Contract Review Committee within seventy-two (72) hours after said purchase or award of said contract.

(3) The Contracting Officer designated in Part I, A(4) with respect to (a) taking down, removing or otherwise making safe unsafe structures or excavations in accordance with the Unsafe Structures Act of March 1, 1899, as amended, Secs. 5-501 to 5-508, D.C. Code, 1973 ed.; (b) construction or installation of means of egress or other appliances in accordance with the provisions of the Means of Egress Act of December 24, 1942, Secs. 5-317 to 5-323, D.C. Code, 1973 ed.; and (c) causing correction of conditions which exist on or have arisen from property in violation of law or any regulation made by authority of law in accordance with Sec. 5-313, D.C. Code, 1973 ed., as amended.

(4) The Contracting Officer designated in Part I, A(5) with respect to repairs, changes or demolition and removal of insanitary buildings in accordance with the Act to Create a Board for the Condemnation of Insanitary Buildings of May 1, 1906, as amended, Secs. 5-616 to 5-631, D.C. Code 1973 ed.

(5) The Contracting Officer designated in Part I, A(6) with respect to contract hospitals and medical vendors and services under the Medical Assistance Program for the District of Columbia (Medicare and Medicaid, Titles XVIII and XIX, Social Security Act).

(6) The Contracting Officer designated in Part I, A(6) with respect to (a) services of a professional, technical and scientific nature provided by institutions or individuals to physically handicapped persons participating in the programs of the department; and (b) appliances or such other specialized items as may be peculiar to the vocational rehabilitation program.

(7) The Contracting Officer designated in Part I, A(7) only with respect to the sale to the various departments of the District of Columbia and Federal Governments, to any State or sub-division of a State, or any Commonwealth, Territory or Possession of the United States, of products and services produced by the Industries Division of the Department of Corrections.

(8) The Contracting Officer designated in Part I, A(6) with respect to (a) all supplies, materials, equipment and services necessary for the operation of programs under his supervision; (b) the acquisition by purchase of real property, demolition of improvements on real property, managing, leasing, outleasing or disposing of real property, and the installation of snack bars and vending facilities on District-owned or leased properties; and (c) the sale of surplus personal property, supplies, equipment and scrap materials and (d) all consulting, architect-engineer, and contracts (including alterations and repair) determined necessary for the proper performance of all types of classes of work now and hereafter placed under his supervision, and (e) represent the Department in all relationships with Federal Agencies concerning procurement matters, including negotiations or agreements for cooperative procurement programs.

(9) The Contracting Officer designated in Part I, A(8) with respect to contracts with Neighborhood Planning Councils and Community Participating Organizations in regard to D.C. Youth Programs financed by grant contract; private funds or donations; or funds appropriated for this purpose, provided the amount of such contract does not exceed \$25,000.

(10) The Contracting Officer designated in Part I, A(6) with respect to those negotiated services which

are within the functional responsibility of the Department of Human Resources as stated in the Reorganization Plan No. 3 to include Determinations and Findings involving Quantum Meruit and Quantum Valebat authorizations.

(11) The Contracting Officer designated in Part I, A(9) with respect to development, operation, administration, and maintenance of a comprehensive program of employment and training opportunities under the Comprehensive Employment and Training Act of 1973 (CETA) and under Title IV of the Social Security Act (the WIN Program), provided the amount of the contract does not exceed \$5,000.00.

(12) The Contracting Officer designated in Part I, A(7) with respect to construction and repair of District Government owned buildings provided the building is under their exclusive control, and the amount of the contract does not exceed \$5,000.00.

B. (1) All contracts and change order shall be subject to the following:

(a) Certification by the Director of Finance and Revenue or his designee, that they are correct and proper for payment in the verified amount;

(b) Determination as to legal sufficiency in such manner as meets the requirements of the Corporation Counsel, D.C., and

(c) In the case of each contract in excess of \$5,000,000, approval of the executed formal contract by the Mayor or his designee.

(2) Bids, proposed contracts and proposed change orders coming within the criteria in Part IV (B) (1), (2), (3) and (4) shall be submitted to the Contract Review Committee for review and recommendations as provided in Part IV hereof.

C. (1) The Contracting Officer designated in Part I, A(1) is authorized to determine that capital outlay funds appropriated for public building construction services may be utilized to pay for services by architect-engineer contracts or by departmental personnel, except as elsewhere provided herein.

(2) The Contracting Officer designated in Part I, A(6) is authorized to determine the capital outlay funds appropriated for public building construction services for buildings and or offices under his supervision may be utilized to pay for services by architect-engineer contracts or by departmental personnel.

(3) Each Contracting Officer designated in Part I, A(1); Part I, A(2); Part I, A(3); Part I, A(4) and Part I, A(6) is authorized to determine whether repair and improvements projects shall be performed under contracts or by department personnel (force account).

(4) The Director of Corrections, D.C., in collaboration with the Director, Department of General Services, or his designee, is authorized to determine the fair market prices to be charged by the Department of Corrections for products and services of the Industrial Enterprises of the D.C. Workhouse and Reformatory. Should the Director of Corrections and the Director of General Services fail to agree as to the fair market price of any such product or services, their respective recommendations, with reason therefor, shall be submitted to the Contract Review Committee for decision.

(5) Whenever 50 per centum of the work required under a contract for construction has been completed and payments therefor have been made, the Contracting Officer may authorize subsequent payments to be made to the Contractor without withholding from such subsequent payments 10 per centum thereof as required by Section 1-807, D.C. Code, 1973 ed. or the said Contracting Officer may authorize retention from such subsequent payments of less than 10 per centum thereof and whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the District of Columbia, may, in his discretion, release to the contractor all or a portion of such excess amount; and the said Contracting Officer may further authorize payment in full, including retained percentages for each separate building or public work on which the price is stated separately in the contract upon completion and acceptance of such building or work.

PART III

The Director of General Services.—The Director of General Services or his designee shall:

A. Collaborate with Contracting Officers in developing and implementing effective contracting procedures which are designed to expedite the work of the Contracting Officers.

B. Perform centralized services in connection with contract administration for departments and offices of the District of Columbia Government, such as advertising for competitive bids, opening and tabulating bids, preparing formal contracts and bonds after awards are made by the authorized Contracting Officer, and assisting in the preparation of all types of contractual documents, except as provided elsewhere herein.

C. Obtain necessary wage rate schedules from the U.S. Department of Labor and notify all Contracting Officers of changes when and as they occur.

D. Represent the District of Columbia Government in all relationships with Federal Agencies concerning procurement matters, including negotiations or agreements for cooperative procurement programs except as provided elsewhere herein.

PART IV

Contract Review Committee.—A. There is hereby established a Contract Review Committee consisting of the following: (1) an Assistant Corporation Counsel and an alternate to be designated by the Corporation Counsel, who shall serve as Chairman; (2) a representative and an alternate representative of the Department of Finance and Revenue to be appointed by the Director, and (3) one Contracting Officer appointed or provided for herein to be designated by the Chairman. The Chairman of the Contract Review Committee shall select, on a rotating basis, one Contracting Officer or his designated Alternate Contracting Officer, other than the Contracting Officer negotiating the contract or change order under consideration to serve as the third member of the Committee. Whenever the Contract Review Committee is to consider a contract for construction or architect-engineer services, the third member shall be one of the Contracting Officers listed in Part I, A(1); Part I, A(2); Part I, A(3); or Part I, A(6). The Committee shall develop its own procedures for the conduct of business.

B. The Contract Review Committee shall review and make recommendations to Contracting Officers on the following:

(1) Bids regardless of dollar amount where a Contracting Officer proposes to award a contract to a bidder other than the bidder submitting the lowest bid.

(2) Bids regardless of dollar amount where a Contracting Officer proposes to award a contract of a nature which involves a payment to the District where it is proposed to accept other than the highest bid.

(3) Negotiated contracts (except those designated in Part II (A) (1) (b), (A) (4) and A (5) in excess of \$25,000 where such contracts cover personal services, consultant services, architect-engineer services, and any other forms of contract involving negotiations as to price between the Contracting Officer and the Contractor. The Committee shall develop and issue standards and procedures for negotiated contracts and shall review such contracts to assure compliance with established negotiated procedures.

(4) Proposed contract change orders in excess of \$100,000.

(5) Plea of error made by bidder.

(6) Requests of bidders who wish to withdraw bids.

(7) All protests received from bidders or prospective bidders.

C. In those instances where the Committee does not concur in the action recommended by a Contracting Officer and the Contracting Officer concerned does not agree with the recommendations of the Committee, the matter shall be presented by the Committee to the Mayor or his designee for determination. This procedure shall not be construed to relieve the Contracting Officer of his responsibility for entering into and administering the contract involved.

PART V

Contract Advisory Committee.—A. There is hereby established a Contract Advisory Committee consisting of (1) the Director, Department of General Services, or his designee, who shall serve as Chairman; (2) the Director, Department of Highways and Traffic, or his designee, who shall serve as Alternate Chairman; (3) Director, Department of Human Resources and for such other members as the Chairman from time to time shall select from among the various District Government Contracting Officers designated or provided for in Part I hereof. Any three members of the said Committee shall constitute a quorum for the transaction of business. The Committee shall develop its own procedures for the conduct of business.

B. The purpose of the Contract Advisory Committee is to make available to the Mayor, or his designee, and the Contracting Officers appointed by the Mayor, assistance and advice on contracting matters, including the area of contracting authority herein delegated to each Contracting Officer. The Contract Advisory Committee is authorized to make any change in the basic language of the standard contract by a majority vote of such Committee, subject to the approval of the Corporation Counsel.

PART VI

Contract Appeals Board, D.C.—A. There is established a Contract Appeals Board, D.C., consisting of one or more active or retired Assistant Corporation Counsel designated by the Corporation Counsel, one of whom shall serve as Chairman of the Board, and two or more persons appointed or designated by the Mayor from among officers assigned to the Corps of Engineers and detailed to assist the Mayor pursuant to Sec. 503(b) of Reorganization Plan No. 3 of 1967, or from among active or retired District of Columbia officers and employees who have had practical experience in the administration of government contracts. Except as otherwise provided by its rules, all business of the Board shall be conducted by panels of not less than three members at least one of whom shall be active or retired Assistant Corporation Counsel member, but any two members of a panel shall constitute a quorum for the transaction of any business of the Board.

No person shall serve as a member of a panel in the decision of any case in which the appeal has been taken from the action of a Contracting Officer or Alternate Contracting Officer of the department of which he is, or at the time of his retirement was, the Director or an employee, or in which he has participated directly in any aspect of the award or administration of the contract involved.

B. The functions of the Contract Appeals Board shall be to hear, to review, and to decide upon all protests and appeals from actions by Contracting Officers where the Contracting Officer is unable to satisfy the Contractor that the action taken was a proper action, and such other contractual appeals, or classes thereof, as the Mayor may from time to time order. Upon request of the Contractor or of the Contracting Officer, and with the consent of the other, the subject matter of an appeal be remanded to the Contracting Officer, who shall thereupon reconsider his appealed decision, and upon such remand the appeal shall be dismissed. The decision of the Contract Appeals Board in every case shall be final subject to such limitations and review as may be provided by law.

C. The Contract Appeals Board is authorized to prescribe rules of practice and procedure, including the establishment of time limitations and the development of methods of perfecting appeals to it.

D. The Chairman of the Contract Appeals Board shall, from time to time, assign members to panels of the Board, shall be responsible for obtaining the necessary secretarial assistance for the Board and for maintaining centralized custody over all records of the Board, and may, from time to time, designate a member to serve as acting Chairman during his own absence, disqualification or disability.

E. The activities of the Board shall be considered investigations or examinations of municipal matters within the meaning of the Act of July 1, 1902 (D.C.

Code, 1973 ed., Sec. 1-237), and the members of said Board shall possess the power vested in the Mayor by said Act of July 1, 1902.

PART VII

Effective date.—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 12.—POLICE AND FIREMEN'S RETIREMENT AND RELIEF BOARD

Organization Order No. 12, Commissioner's Order No. 68-531, Aug. 6, 1968, establishing the Police and Firemen's Retirement and Relief Board, was repealed and replaced by Organization Order No. 48, Commissioner's Order No. 74-199, Sept. 29, 1974, to the extent the provisions thereof are in conflict with the latter order.

ORGANIZATION ORDER NO. 15.—DISTRICT OF COLUMBIA COMMISSION ON ACADEMIC FACILITIES

Organization Order No. 15, Commissioner's Order No. 68-617, Sept. 20, 1968, as amended Mar. 7, 1969, establishing the District of Columbia Commission on Academic Facilities, was rescinded and replaced by Organization Order No. 205, Mayor's Order No. 75-23a, Feb. 1, 1975.

ORGANIZATION ORDER NO. 16.—COMMISSION ON THE ARTS AND HUMANITIES

Organization Order No. 16, Commissioner's Order No. 68-737, Nov. 29, 1968, as amended by Comm. Ord. No. 74-4, Jan. 7, 1974, establishing the Commission on the Arts and Humanities, was repealed by section 8 of Act Oct. 21, 1975, D.C. Law 1-22, and replaced by sections 1-7 of that Act which are classified to § 31-1901 et seq.

ORGANIZATION ORDER NO. 20.—ADVISORY COMMITTEE ON THE AGING

Organization Order No. 20, Commissioner's Order No. 69-212, May 12, 1969, as amended by Mayor's Order No. 75-67, Mar. 20, 1975, established the Advisory Committee on the Aging. The Committee was abolished by D.C. Law No. 1-24, Oct. 29, 1975.

ORGANIZATION ORDER NO. 23.—D.C. PUBLIC SPACE COMMITTEE

(Organization Order No. 23, Commissioner's Order No. 69-502, Sept. 3, 1969, as amended Oct. 6, 1971, Dec. 20, 1972, July 13, 1973, Jan. 30, 1975.)

By virtue of the authority vested in me as Mayor of the District of Columbia, it is hereby ordered that Order of the Commissioner No. 69-502, dated September 3, 1969 (Organization Order No. 23) is amended to read as follows:

A. Establishment.—There is established in the Government of the District of Columbia a D.C. Public Space Committee.

B. Purpose and functions.—

(1) The Committee is established for the purpose of making final determinations in cases involving the use of public space, exclusive of those involving the permanent closing of streets and alleys, those which have been delegated to the Director, Department of Economic Development in Commissioner's Orders Nos. 72-174 and 68-144, and those involving the use of air space above or below a street or alley under the jurisdiction of the Mayor.

(2) All final determinations by the Committee shall be by a majority of the members present and voting.

(3) The Chairman may take final action on certain routine applications for the use of public space, including but not limited to temporary street closings, use of public space for television or radio purposes, or filming activities, in those instances where because of the circumstances it is not practicable to convene the full Committee in time to take such action, provided, that the Chairman shall report all such actions to the full Committee at its next regularly convened meeting.

C. Composition.—(1) The D.C. Public Space Committee shall be composed of the following members:

- Director, Department of Highways and Traffic, D.C. (who shall serve as Chairman of the Committee).
- Director, Department of Environmental Services, D.C.
- Director, Department of Economic Development, D.C.

Director, Office of Housing and Community Development, D.C.

An Assistant Corporation Counsel to be designated by the Corporation Counsel, D.C.

(2) Each member of the Committee may be represented at a meeting of the Committee by an alternate designated by him from among his senior assistants to serve on said Committee and such alternate is authorized to exercise at meetings of said Committee all of the powers vested in the member whom the alternate represents.

D. Administration.—The Director, Department of Highways and Traffic, D.C. shall provide the necessary administrative and staff services required by the Committee.

E. Repeal of previous orders.—All Orders of the Commissioner, or parts of such Orders, in conflict with the provisions of this Order, are, to the extent of such conflict, hereby repealed.

F. Effective date.—This Order shall be effective immediately.

ORGANIZATION ORDER NO. 24.—ADVISORY COMMITTEE ON EMERGENCY MEDICAL SERVICES

(Organization Order No. 24, Commissioner's Order No. 69-591, Oct. 14, 1969, as amended June 18, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, IT IS HEREBY ORDERED:

That Organization Order No. 24, dated October 14, 1969 (Commissioner's Order No. 69-591), is hereby amended and reissued in its entirety to read as follows:

There is hereby established in the Government of the District of Columbia the Advisory Committee on Emergency Medical Services.

PART I

Purpose.—The Advisory Committee on Emergency Medical Services shall advise and assist the Commissioner in preparing an Emergency Medical Services Plan and in developing standards and regulations governing ambulances, equipment and supplies, personnel and training, communications, and the emergency care and treatment of the injured or suddenly-ill at the scene of their injury or illness, in transport, or at the emergency treatment facility in accordance with the provisions of Public Law 89-564 (80 Stat. 731; 23 U.S.C. Sec. 401, et seq.) and other applicable legislation.

PART II

Functions.—The Committee shall advise and assist, through the Director of the Department of Human Resources, the Commissioner for the District of Columbia in:

1. Developing a comprehensive plan for emergency medical services to serve the residents of the District of Columbia.
2. Coordinating the activities of lay and professional groups and organizations essential to the improvement of the District of Columbia's emergency medical services program.
3. Coordinating the requirements for contract agreements between the District of Columbia and surrounding state jurisdictions to insure reciprocity of standards and regulations in the Washington metropolitan area.
4. Reviewing the needs of the community on a continuing basis, including the need for further technological training.
5. Performing such other functions as the Commissioner or the Director of the Department of Human Resources may assign to the Committee relative to emergency medical services.

PART III

Composition and membership.—

a. The Committee shall be composed of representatives to be named by the Commissioner from the following organizations and agencies:

1. Medical Society, District of Columbia.
2. American Academy of Orthopaedic Surgeons on Trauma, District of Columbia.
3. Medico-Chirurgical Society.
4. American College of Surgeons.
5. District of Columbia Council.

6. Department of Human Resources, District of Columbia.
 7. Department of Motor Vehicles, District of Columbia.
 8. Metropolitan Police Department, Traffic Division, District of Columbia.
 9. Fire Department, Emergency Ambulance Service, District of Columbia.
 10. Board of Police and Fire Surgeons, District of Columbia.
 11. Corporation Counsel, District of Columbia.
 12. Medical Examiner, District of Columbia.
 13. American Red Cross, District of Columbia.
 14. Hospital Council of the National Capital Area.
 15. Ambulance Association of the District of Columbia.
 16. Member-at-large.
 17. Cado Lanco.
 18. Federation of Civic Associations.
 19. CECO (Capitol East Community Organization).
 20. Parent-Teacher's Congress, District of Columbia.
 21. Metropolitan Washington Board of Trade.
 22. An emergency room representative from—
 - a. one community-based hospital in the District
 - b. one university-affiliated hospital in the District
 - c. the D.C. General Hospital
 23. Health and Welfare Council.
- The Chairman shall be elected from the membership. The term of office shall be established by the membership. The Director of the Department of Human Resources is authorized to designate a member of his staff to serve as an executive secretary for the Committee.

PART IV

Terms of office.—Members, other than those representing agencies of the District of Columbia Government who shall be permanent, shall serve for three years, except for initial appointments, as follows: Of the persons first appointed as members of the Committee, one-third shall be appointed for three years, one-third for two years, and, the remainder for one year. Should a vacancy occur through death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of that member. After expiration of his term, each member shall continue to serve until his successor is appointed and qualified. Members shall serve for not longer than two full consecutive terms.

PART V

Organization.—The Committee shall establish work groups structured as deemed necessary to accomplish its mission. The members of such work groups shall elect their own chairmen. The Committee shall meet at least once each quarter at the call of the Chairman; the work groups, as required at the call of each elected work-group chairman. The Committee shall determine its own procedures consistent with this Order to implement the performances of its functions.

PART VI

Compensation.—Members shall serve without compensation but appropriate expenses will be reimbursed as indicated in Part VII of this Order.

PART VII

Administration.—The Executive Secretary to the Committee shall be responsible for Committee administration and shall provide it with the necessary staff services. Expenses incurred by the Committee as a whole, or its individual members, when authorized by the Director of the Department of Human Resources, will become an obligation against funds designated for that purpose.

PART VIII

Reports.—Reports and recommendations of the Committee for standards, regulations, and studies as set forth in this Order shall be forwarded to the Commissioner, through the Director of Department of Human Resources for consideration. Release of reports and recommendations shall be at the discretion of the Commissioner, or his designee.

PART IX

Effective date.—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 28.—MANPOWER ADVISORY COMMITTEE

Organization Order No. 28, Commissioner's Order No. 71-30, Feb. 10, 1971, as amended April 2, 1971, Oct. 19, 1971, Mar. 8, 1972, Sept. 28, 1973, was redesignated Organization Order No. 44 and reissued by Commissioner's Order No. 74-84, May 24, 1974.

ORGANIZATION ORDER NO. 30.—OFFICE OF BUDGET AND FINANCIAL MANAGEMENT

[The Office of Budget and Financial Management was replaced by the Office of Budget and Management Systems, see Org. Ord. No. 50.]

[Functions of the Office of Budget and Financial Management set forth in Organization Order No. 30, Commissioner's Order No. 72-80, Apr. 5, 1972, were transferred to the Office of Budget and Management Systems by Organization Order No. 50 (Supplement No. 1), Mayor's Order No. 75-41, Feb. 26, 1975.]

ORGANIZATION ORDER NO. 33.—OFFICE OF MUNICIPAL AUDIT AND INSPECTION

[Functions of the Office of Municipal Audit and Inspection set forth in Organization Order No. 33, Commissioner's Order No. 72-177, July 14, 1972, were transferred to the Office of Budget and Management Systems by Organization Order No. 50 (Supplement No. 1), Mayor's Order No. 75-41, Feb. 26, 1975.]

ORGANIZATION ORDER NO. 34.—MAYOR'S COMMITTEE ON NELSEN COMMISSION COORDINATION

Organization Order No. 34, Commissioner's Order No. 72-193, July 26, 1972, establishing the Mayor's Committee on Nelsen Commission Coordination, was rescinded by Organization Order No. 36, Commissioner's Order No. 73-60, Mar. 9, 1973.

ORGANIZATION ORDER NO. 36.—MAYOR'S POLICY COORDINATION GROUP

(Organization Order No. 36, Commissioner's Order No. 73-60, Mar. 9, 1973.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, Commissioner's Order No. 72-234 [Org. Action], September 13, 1972, and Commissioner's Order No. 72-193 [Org. Ord. No. 34], July 26, 1972, is hereby rescinded, and it is ORDERED THAT:

1. *Establishment.*—There is established in the Government of the District of Columbia the Mayor's Policy Coordination Group.

2. *Purpose.*—The Mayor's Policy Coordination Group shall assist the Mayor to develop and implement executive policies affecting a better physical, social and economic environment for the residents of the city.

The Group will have jurisdiction over such matters as: the District of Columbia's participation in the National Bicentennial Observance; interagency concerns with intergovernmental policies and relations; policy matters affecting implementation of the Nelsen Commission's recommendations to improve government operations; government-wide planning questions and such other issues as may be identified by the Mayor-Commissioner.

Appropriate subcommittees may be created to carry out its responsibilities.

3. *Composition.*—The Mayor-Commissioner shall serve as Chairman of the Policy Coordination Group. Other members are to be selected by the Mayor from among department and agency heads.

Public and private advisors may be added to the Policy Coordination Group, or its subcommittees. Members and staff of the City Council may be invited to participate when appropriate.

4. *Administration.*—The Office of Planning and Management shall provide the Policy Committee with administrative staff services and coordinate this program.

The provisions of this Order shall take effect immediately.

ORGANIZATION ORDER NO. 37.—SPACE MANAGEMENT—SPACE REVIEW COMMITTEE

(Organization Order No. 37, Commissioner's Order No. 73-104, Apr. 26, 1973.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

1. *Policy.*—It is the policy of the Mayor-Commissioner that all space and facilities for use by the Government of the District of Columbia be procured and utilized with maximum efficiency and economy. All space and facilities used by departments and agencies shall be periodically surveyed for utilization and, as necessary, be reassigned by the Director of General Services, subject to review by the Mayor-Commissioner.

2. *Responsibilities.*—A. Heads of Departments and Agencies and all supervisors are responsible for:

i. Implementing the policies, procedures, and criteria prescribed for the management of space.

ii. Managing assigned space to achieve maximum economy consistent with maximum program effectiveness.

iii. Keeping the Department of General Services advised of new and changing space requirements for submission in budget requests.

B. The Director of the Office of Budget and Financial Management is responsible for coordinating procedures with the Director of General Services to insure an economical space budget for the District Government.

C. The Director of General Services is responsible for:

i. Providing the Mayor-Commissioner annually with a space budget which describes use made of existing space and additional space requirements. This includes space to be acquired by lease, direct construction through the Capital Improvements Program, or by any other source. Recommendations will include the collocation of agencies to consolidated facilities whenever appropriate.

ii. Promulgating space management standards and criteria to be applied by all elements of the District Government, including special standards and allowances. These standards will be enforced by periodic surveys conducted in conjunction with the using departments.

iii. Procuring, assigning, reassigning and modifying space for the departments and agencies to achieve maximum efficiency and effectiveness at minimum cost.

iv. Reviewing the space expansion plans of departments and agencies as contained in their budget requests, and making recommendations to the Director of the Office of Budget and Financial Management for necessary budgetary action.

3. *Space Review Committee establishment.*—There is established in the Government of the District of Columbia a Space Review Committee, which is responsible for:

(a) Advising the Director of General Services on appeals against specific space management actions he proposes;

(b) Assisting and advising the Director of General Services, on his request, in executing the function specified in this Order.

4. *Committee composition.*—The Committee will be convened by the Director, Office of Planning and Management, and will include the D.C. Personnel Officer and the Directors of the Department of General Services, the Department of Economic Development, and the Office of Budget and Financial Management.

ORGANIZATION ORDER NO. 38.—COMMISSION ON THE STATUS OF WOMEN

(Organization Order No. 38, Commissioner's Order No. 73-94a, Apr. 24, 1973.)

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, it is hereby ordered that:

1. *Establishment.*—There is established in the Government of the District of Columbia a Commission on the Status of Women.

2. *Functions.*—The Commission may conduct studies; review progress, develop, recommend and undertake constructive action; and initiate and conduct programs directed toward improving the status of women in the District of Columbia, particularly in the following areas:

a. Elimination of discrimination based on sex.

b. Public and private employment practices, including matters pertaining to hours, wages and working conditions.

c. Education at every stage of life.

d. Equality of rights and responsibilities of men and women under the law in regard to political, civil and property rights as well as family relations.

e. New and expanded services for women to facilitate their optimal functioning as homemakers, breadwinners, and citizens; including mental and physical health care, and improvement of facilities for child care and youth development.

3. *Composition.*—The Commission shall be composed of not less than 15 nor more than 21 members appointed for three-year terms by the Mayor-Commissioner from among citizens of the District of Columbia with experience in the area of public affairs and women's activities. None shall serve for a period of more than two full terms consecutively. The Commission shall designate annually from among its members a Chairman, a Vice-Chairman and a Secretary. The Officers shall not serve in the same office more than three consecutive terms.

4. *Administration.*—An Executive Director shall work in conjunction with the Chairman to provide leadership in carrying out policies, programs and projects approved by the Commission. The Executive Secretary shall furnish the Commission with administrative, fiscal and house-keeping services. In addition, the District of Columbia departments and agencies shall cooperate with the Commission and its committees in furtherance of the Commission's objectives, upon direction of the Mayor-Commissioner.

5. *Procedure.*—The Commission shall draw up its own rules and procedures. The Commission shall designate such committees as it deems necessary to accomplish the purposes of the Commission. The Commission shall meet at least three times a year at the call of the Chairman.

6. *Grants.*—The Commission is authorized to apply for and receive grants to fund its program activities, in accordance with established procedures relating to grants management coordinated through the Office of Budget and Financial Management.

7. *Annual report.*—The Commission shall submit an annual report to the Commissioner.

8. Commissioner's Order 67-38 of January 10, 1967, is rescinded.

ORGANIZATION ORDER NO. 39.—RELOCATION ADVISORY COMMITTEE

(Organization Order No. 39, Commissioner's Order No. 73-151, June 26, 1973.)

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, it is hereby ordered that:

1. *Establishment.*—There is hereby established in the Government of the District of Columbia a permanent Relocation Advisory Committee.

2. *Purpose and functions.*—The Committee shall be guided by Public Law 91-646 [42 U.S.C. 4601 et seq.], the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Public Law 88-629 [D.C. Code §§ 5-728 to 5-732], the District of Columbia Relocation Act of 1964 (herein referred to as "the Acts"); and all applicable District relocation regulations.

The functions of the Committee are as follows:

A. To advise the Commissioner, the General Manager of WMATA, or the appropriate heads of Federal Agencies on the priorities of public works projects within the District necessitating the provision of relocation services and payments.

B. To develop and recommend to the Commissioner, the General Manager of WMATA, or the appropriate heads of Federal agencies the priority guidelines for relocation assistance to: individuals, families and businesses to be displaced by the acquisition of real property by the District of Columbia, the United States, or the Washington Metropolitan Area Transit Authority; and individuals, families and businesses who may be displaced by condemnation of unsafe and insanitary buildings or enforcement of the laws or regulations relating to housing.

C. With respect to the Commissioner's responsibility to determine the availability of housing for displaced individuals and families as required by Section 210 of the Act and applicable District relocation regulations; to review and advise the Commissioner regarding reports submitted by the Relocation Assistance Office of

the D.C. Redevelopment Land Agency which pertain to:

(1) Housing needs of those residing in each site to be acquired.

(2) Availability of relocation housing to meet the needs of those to be displaced.

(3) Availability of funds to carry out relocation activities in a timely manner.

D. To review all reports prepared by the Relocation Assistance Office of the Redevelopment Land Agency involving payments and relocation services that have been or may be provided pursuant to the Acts.

E. At the direction of the Commissioner or the Assistant to the Commissioner for Housing Programs to perform such other related tasks as are deemed pertinent.

3. *Composition and membership.*—The Relocation Advisory Committee shall consist of the following members *ex officio*:

Assistant to the Commissioner for Housing Programs, who shall serve as Chairman. In his absence or unavailability, he shall designate a staff member of the Office of Housing Programs as his representative who shall be acting Chairman.

Director, Department of Highways and Traffic, or his designated representative.

Director, Department of Economic Development, or his designated representative.

Director, Department of General Services, or his designated representative.

Executive Director, D.C. Redevelopment Land Agency, or his designated representative.

Executive Director, National Capital Housing Authority, or his designated representative.

D.C. Corporation Counsel, or his designated representative.

Superintendent, D.C. Public Schools, or his designated representative.

General Manager, Washington Metropolitan Area Transit Authority, or his designated representative.

Director, Office of Budget and Financial Management, or his designated representative.

The Director, National Capital Planning Commission. Administrator, General Services Administration.

4. *Administration.*—The Assistant to the Commissioner for Housing Programs is authorized to provide administrative services to the Committee.

5. *Rescission.*—Commissioner's Order 65-339 (Organization Order 146) of March 16, 1965, is rescinded.

ORGANIZATION ORDER NO. 40.—OFFICE OF CONSUMER AFFAIRS

(Organization Order No. 40, Commissioner's Order No. 73-225, Oct. 3, 1973, as amended July 17, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

1. *Establishment.*—There is hereby established in the Government of the District of Columbia, in the Executive Office, the Office of Consumer Affairs, to be headed by a Director who shall perform the functions herein transferred, delegated, or otherwise assigned, and who shall have the authority to redelegate such functions as he deems necessary.

2. *Purpose.*—The purpose of the Office of Consumer Affairs is to direct, coordinate, and assure the effective discharge of District Government responsibilities in the field of consumer protection including protection of residents and visitors from fraudulent or unfair trade practices and unsafe merchandise or services. The office shall also provide consumer education opportunities and assure that consumer protection regulations are administered and enforced equitably and fairly.

3. *Function.*—The Director of the Office of Consumer Affairs shall:

A. Receive and evaluate consumer complaints.

B. Administer and enforce the D.C. Consumer Retail Credit Regulation (City Council Regulation 71-18), June 1, 1971 and such other consumer protection regulations as may be assigned.

C. Perform the functions vested in the Commissioner by the District of Columbia Consumer Credit Protection Act of 1971 (P.L. 92-200) [D.C. Code § 28-3801 et seq.].

D. Recommend to the Mayor-Commissioner a Consumer Protection Plan for the District of Columbia.

E. Recommend to the Mayor-Commissioner appropriate legislation or regulations necessary to protect and promote the interests of consumers.

F. Promote fair business practices within the business community.

G. Conduct educational programs to assist consumers and businessmen.

H. Establish liaison with consumer groups.

I. Be available to advise, consult and cooperate in the implementation of consumer protection policies throughout the District Government.

J. Conduct research, surveys and special studies and render annual reports on the status of consumer protection efforts in the District of Columbia.

4. *Director, Office of Consumer Affairs.*—The Director shall be appointed by the Mayor-Commissioner and shall have in addition to any other powers or duties, the power and duty to:

A. Adopt rules of procedure, subject to the approval of the Mayor-Commissioner, for the conduct of duly authorized public hearings in the field of consumer protection.

B. Undertake investigations of matters and practices relating to fraudulent or unfair trade practices and unsafe merchandise or services.

5. *Advisory Committee on Consumer Affairs.*—

A. *Establishment and purpose.* There is established in the Government of the District of Columbia an Advisory Committee on Consumer Affairs, whose function shall be to advise the Director and provide such other assistance as the Director may request.

B. *Functions.* The Committee shall:

(1) Sponsor and encourage public discussion of issues related to consumer protection.

(2) Recommend programs and priorities in the effort to assure consumer protection.

(3) Aid the Director of the Office of Consumer Affairs in the formulation of the Consumer Protection Plan and recommend proposed legislation and regulations relating to consumer protection.

(4) Be available to assist the Director in informing the public of the existence of laws, regulations, guidelines or other materials concerning consumer rights and standards of fair treatment.

(5) Cooperate with consumer-related agencies, groups, and individuals in the metropolitan area to improve area-wide consumer protection efforts.

C. *Composition.* The Committee shall comprise fifteen members named by the Mayor-Commissioner from both the general public, and employees of the District Government. The chairman should be designated by the Mayor.

Terms of office for the non-government members shall be for three years except that initial appointments shall be arranged so that one-third of the appointments shall expire each year.

D. *Government coordination.* The government members of the Advisory Committee shall be separately constituted as an Inter-agency Coordinating Committee on Consumer Affairs, and may with the assistance of such other members from the government sector as the Mayor-Commissioner may from time to time designate, recommend to the Director procedures to strengthen and promote the program and the exchange of consumer information within the District Government. The Director or his designated alternate will serve as chairman of the Inter-agency Coordinating Committee.

E. *Administration.* The Office of the Director of Consumer Affairs shall provide staff support for the Advisory Committee. Appropriate expenses incurred by the Committee as a whole, or by individual members, may be paid when authorized by the Director.

6. *Organization.*—The Director of the Office of Consumer Affairs, in the performance of functions for which he is responsible, is authorized to establish such organizational components thereunder with such specified functions as he deems appropriate.

7. *Transfer of functions.*—There is hereby transferred to the Director of the Office of Consumer Affairs the protection of consumers functions that were delegated to the Department of Economic Development by Commissioner's Order 69-96, March 7, 1969.

8. *Other transfers.*—All property and records relating to the above function are hereby transferred from the Department of Economic Development to the Office of Consumer Affairs.

9. *Rescissions.*—The following Commissioner's Orders are rescinded:

C.O. 69-85 of February 28, 1969 [amending Reorg. Ord. No. 55], establishing an Office of Consumer Affairs.

C.O. 69-271 of June, 1969, relating to the Consumer Affairs Regulation.

C.O. 71-194 of June 16, 1971, authorizing the Director of the Department of Economic Development to perform the functions vested in the Mayor-Commissioner by the District of Columbia Consumer Retail Credit Regulation.

10. *Effective date.*—The provisions of the Order shall take effect November 1, 1973.

ORGANIZATION ORDER NO. 41.—COOPERATIVE AREA MANPOWER PLANNING SYSTEM (CAMPS) STAFF

(Organization Order No. 41, Commissioner's Order No. 73-223, Sept. 28, 1973.)

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, it is hereby ordered that:

I. *Establishment and purpose.*—There shall be established in the Government of the District of Columbia, within the Office of the Mayor-Commissioner, the Cooperative Area Manpower Planning System (CAMPS) Staff, which shall provide support to the Mayor-Commissioner, through his Special Assistant for Manpower, to enable the District of Columbia to carry out the functions required for District participation in the Cooperative Area Manpower Planning System established by the President's Executive Order No. 11422.

II. *Functions.*—The CAMPS Staff shall:

A. Prepare for approval of the Mayor, and eventual submission to the Federal Regional Manpower Coordinating Committee (RMCC), the Annual CAMPS Plan, incorporating the recommendations of the Manpower Advisory Committee (MAC) and utilizing the technical assistance provided by the District of Columbia Manpower Administration (DCMA).

B. Periodically review the implementation by DCMA and other agencies of the CAMPS Program to assure conformity with the Plan, and prepare assessments for review by the MAC and appropriate action by the Mayor-Commissioner.

C. Prepare, for approval by the Mayor-Commissioner, revisions to the CAMPS Plan, as recommended by the MAC and/or the CAMPS Staff, DCMA, and other operating agencies, utilizing the technical assistance of DCMA.

D. Participate with DCMA in its responsibility to:

1. Review and evaluate proposals designed to implement appropriate segments of the CAMPS Plan, and

2. Monitor executed contracts.

E. Promote the coordination of the numerous manpower planning efforts within the D.C. Metropolitan Area.

III. *Organization.*—

A. *Special assistant.* In order more effectively to carry out the objectives of Executive Order 11422, the position of Special Assistant to the Mayor-Commissioner for Manpower is hereby established in the Office of the Mayor-Commissioner. The Special Assistant for Manpower shall serve as Chairman of the Manpower Advisory Committee and provide overall leadership and direction to the CAMPS Staff.

B. *Staff director.* The primary responsibility, within the CAMPS Staff, for implementing policy and program activities as directed by the Special Assistant for Manpower shall be vested in a position to be entitled CAMPS Staff Director. In addition to directly supervising the daily activities of the CAMPS Staff, and monitoring all administrative functions, the CAMPS Staff Director shall attend all MAC meetings and, in the absence of the Special Assistant for Manpower, report directly to the Mayor-Commissioner on matters necessitating an immediate line of communication.

ORGANIZATION ORDER NO. 42.—OFFICE OF PETROLEUM ALLOCATION—DEPARTMENTAL ENERGY GROUP—CITIZENS FUEL CONSERVATION COMMITTEE

(Organization Order No. 42, Commissioner's Order No. 74-6, Jan. 7, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, the following is hereby ordered:

I. *Purpose.*—To maintain essential services and to protect the health and welfare of the residents of the District of Columbia, and to exercise District Government responsibilities with respect to the consumption in the District of Columbia of motor vehicle and heating fuels which are under federal allocation.

This directive establishes the Office of Petroleum Allocation, the Departmental Energy Group, and the Citizens Fuel Conservation Committee. It also sets forth a number of energy conservation measures relating to the exercise of authority and responsibility for the control and use of all petroleum, oil and lubricant products by the District of Columbia Government and establishes a local board for hardship situations.

II. *Office of Petroleum Allocation.*—Pursuant to Section 5(b) of the Emergency Petroleum Allocation Act of 1973, there is established in the District of Columbia an Office of Petroleum Allocation as a unit of the Office of Civil Defense which will provide staff services for it. In order to execute on behalf of the Mayor-Commissioner the responsibilities delegated by the Federal Energy Office for mandatory fuel allocation, this Office of Petroleum Allocation shall serve as a point of contact for appropriate requests and petitions received by the District Government with respect to petroleum allocations. This office shall be administered by an Administrator appointed by the Mayor-Commissioner.

III. *Departmental Energy Group.*—

There is established a Departmental Energy Group whose duties and functions shall be as follows:

A. To assist the Mayor in formulating District-wide policies regarding fuel energy allocation,

B. To receive and resolve appeals of District agencies with respect to fuel allocations,

C. To recommend measures for energy conservation within the District Government,

D. To develop contingency plans to meet foreseeable community problems,

E. To maintain liaison with the Metropolitan Council of Governments and other governmental jurisdictions throughout the local metropolitan area,

F. Under the Chairmanship of the Mayor, the Departmental Energy Group shall be composed of the following ex-officio members:

Director, Office of Civil Defense, (Convenor)

The Corporation Counsel

The Superintendent of Public Schools

Representative of the City Council

Director, Department of Economic Development

Chief, Fire Department

Chief, Metropolitan Police Department

Director, Department of Human Resources

Director, Department of General Services

Director, Department of Highways and Traffic

Director, Office of Planning and Management

Director, Department of Environmental Services

Director, Office of Consumer Affairs

Representative of the Washington Metropolitan Area Transit Authority

Representative of the Public Service Commission, District of Columbia Transportation Systems Coordinator

Special Assistant for Housing Programs

Director, Personnel Office

G. Representatives of other District Government departments and agencies may be invited to participate in the meetings and work of the Departmental Energy Group as appropriate. By assignment, panels made up of members of the Departmental Energy Group or their alternates may be convened to hear appeals or for other purposes.

IV. *Citizens Fuel Conservation Committee.*—There is also established a Citizens Fuel Conservation Committee with the following duties and functions:

A. To assist the Mayor-Commissioner in carrying out the President's energy programs within the District of Columbia,

B. To recommend to the Mayor actions which the Committee feels, are necessary to achieve conservation of energy,

C. To advise government, business, and private citizens on actions which will mitigate the impact of possible local energy shortages,

D. The Committee, which shall be convened by the Director of the Office of Civil Defense, shall be composed of the following:

President, Federation of Civic Associations, Inc.

President, Federation of Citizens Association of the District of Columbia

President, Greater Washington Labor Council, AFL-CIO

President, Metropolitan Washington Board of Trade
Archbishop of the Catholic Archdiocese of Metropolitan Washington

Coordinator of Ministries, Council of Churches of Greater Washington

Executive Director, Jewish Community Council of Greater Washington

President, Oil Heat Institute of Greater Washington

President, Potomac Electric Power Company

Executive Director, Metropolitan Washington Council for Clean Air

President, Building Owners and Managers Association of Greater Washington

President, D.C. Congress of Parents and Teachers

President, Washington Gas Light Company

President, D.C. Chamber of Commerce

E. Representatives of additional bodies, governmental and nongovernmental, may be invited to participate in the meetings and work of the Committee as appropriate.

V. *Conservation Responsibilities within the District Government.*—A. The Department of General Services, in accordance with established policies and in consultation with departments and agencies concerned, is directed to:

1. Develop and carry out appropriate measures for conservation of energy in District of Columbia physical facilities including the issuance of technical guidance to all D.C. agencies for facilities operation in the interest of energy conservation.

2. Set standards for heating and lighting levels in various facilities.

3. Recommend conversion of heating plants from scarce to more plentiful fuels where necessary and appropriate.

4. Establish programs to insure that heating, air conditioning, and ventilating systems are operated efficiently and economically.

5. Recommend maintenance procedures and construction practices to minimize energy loss.

6. Survey the use of buildings and recommend changes in use of buildings to conserve energy resources.

7. Establish a central Commodity Managership for (POL) Petroleum, Oils, Lubricants and Heating Oil products for the District of Columbia. The POL Commodity Manager will be responsible for all D.C. Government requirements, acquisition, and distribution of gasoline, diesel fuel, and heating oil products.

8. Establish contact with Energy Conservation Officers designated by agencies having a facility responsibility to develop and implement energy conservation procedures.

B. The Personnel Office (Division of Occupational Safety and Health) will, in cooperation with the Department of General Services, provide for the maintenance of health and safety standards and assist in the education and instruction of D.C. personnel in the matter of energy conservation.

VI. *Local Board.*—To respond to appropriate requests and petitions by consumers for relief based on exceptional hardships, there is established a Petroleum Allocation Board. This action is in compliance with section 200.16(b) of the proposed mandatory fuel allocation regulations issued by the Federal Energy Office dated December 13, 1973. The Board will function through three member panels composed as follows:

Designee, Office of Petroleum Allocation,

Designee, Office of Consumer Affairs, and

A citizen member appointed by the Mayor

The Chairman shall be the designee of the Office of Petroleum Allocation. The Administrator of the Office of Petroleum Allocation shall set up as many three person panels as the volume of appeals requires.

ORGANIZATION ORDER NO. 43.—STATE ADVISORY COMMITTEE FOR DRUG ABUSE

(Organization Order No. 43, Commissioner's Order No. 74-12, Jan. 2, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, and by Public Law 92-255, The Drug Abuse Office and Treatment Act of 1972, it is hereby ordered that:

Commissioner's Order No. 71-4 which established the District of Columbia's Advisory Committee on Narcotics Addiction, Prevention and Rehabilitation is hereby rescinded. There is hereby established in the District of Columbia a State Advisory Committee for Drug Abuse.

I. *Functions and Scope of Authority.*—

A. The State Advisory Committee shall advise the Single State Agency Director, Department of Human Resources, in developing and implementing the State Plan for Drug Abuse in the District of Columbia.

B. Recommend courses of action to the Single State Agency and any appropriate organizations on any matters concerning problems and programs related to drug abuse, prevention and rehabilitation.

C. Promote communication between the Single State Agency and any other governmental or voluntary agency involved in programs related to drug dependency and narcotics addiction.

D. Advise the Commissioner through the Director of the Department of Human Resources, on the nature and extent of narcotics addiction and drug dependency, quality of prevention and rehabilitation programs, and prepare periodic reports reviewing the adequacy of existing rehabilitation and prevention programs.

II. *Composition and Membership.*—

The State Advisory Committee shall be comprised of thirty-three (33) members which include representatives of the City Council, Criminal Justice System, Corrections personnel, Welfare, Vocational Rehabilitation, Veterans Mental Health, Public Schools and individuals or organizations concerned with the prevention and treatment of drug abuse and drug dependence. Membership will also include representation from the community at large. The Mayor will appoint a Chairman and Vice-Chairman.

Members shall serve terms of two years, except for initial appointments which shall be as follows: approximately one-half shall serve for one year, and the balance shall serve for two years. The Mayor shall determine initial appointments in order to establish the staggered terms as indicated above. If a vacancy occurs through death, incapacity, removal or resignation of a member, a successor shall be appointed to complete the unexpired term of the member. Upon expiration of his term, a member may continue to serve until his successor is appointed.

III. *Compensation.*—Members of this Committee shall serve without compensation; however, appropriate expenses may be reimbursed when authorized by the Director of the Department of Human Resources. Expenditures so authorized shall become an obligation against funds so designated.

IV. *Organization and Administration.*—The Committee shall determine its own Officers, other than the Chairman, who shall be appointed by the Mayor. The Director of the Department of Human Resources shall provide the Committee with necessary staff support and space as needed, and assist the Committee in matters of administration. Other District of Columbia Departments and Agencies shall provide full cooperation and assistance as called upon by the Director of the Department of Human Resources.

V. *Effective Date.*—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 44.—MANPOWER SERVICES PLANNING ADVISORY COMMITTEE

(Organization Order No. 44, Commissioner's Order No. 74-84, May 24, 1974.)

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, it is hereby ORDERED THAT:

Organization Order No. 28, relating to the establishment of the Manpower Advisory Committee (Commissioner's Order No. 73-223, dated September 28, 1973) is hereby redesignated Organization Order No. 44 and reissued in its entirety to read as follows:

I. *Establishment and purpose.*—There is hereby established in the Government of the District of Columbia a body of persons to be known as the Manpower Services Planning Advisory Committee (MSPAC). The Committee shall provide advice and guidance to the Mayor-Commissioner on all matters pertaining to manpower and related activities in Washington, D.C. As such, it is designed to meet the requirements of Sections 104 and 107 of the Comprehensive Employment and Training Act (CETA), and of Section 95.13 of the Regulations promulgated thereunder.

II. *Functions.*—The Committee shall:

A. Submit, for each fiscal year, to the Mayor-Commissioner a Comprehensive Manpower Plan embodying program plans and basic goals, policies and procedures, with recommendations for the most effective coordination of resources to meet the manpower needs of the City.

B. Monitor the operation of manpower programs contracted by the District of Columbia under CETA.

C. Assess the availability, responsiveness and adequacy of D.C. Government services and make recommendations to the Mayor-Commissioner, to agencies rendering the services, and the general public with respect to methods of improving effectiveness of programs and/or services in accomplishing the purposes of CETA.

III. *Composition and membership.*—

A. Membership will be representative of the broadest spectrum of manpower and related interests in the District of Columbia, shall be selected by the Mayor-Commissioner, and shall consist of representation from the following: vocational education, State Employment Service, other relevant District agencies, organized labor, business, the general public, community-based organizations, and the client population.

B. The Mayor-Commissioner shall appoint the Committee Chairperson.

IV. *Compensation.*—Members shall serve without compensation, except that reasonable expenses for transportation may become an obligation against funds designated for that purpose.

V. *Organization.*—The MSPAC shall determine its own officers, other than the Chairperson.

ORGANIZATION ORDER NO. 45.—OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT

(Organization Order No. 45, Commissioner's Order No. 74-143, June 29, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

1. *Establishment.*—There is established in the Government of the District of Columbia, in the Executive Office of the Mayor-Commissioner, an Office of Housing and Community Development, headed by a Director, appointed by the Mayor-Commissioner. The Director shall perform the functions delegated, transferred or otherwise assigned to him in this Order, and shall have the authority to redelegate such functions as he deems necessary.

2. *Purpose.*—The Office of Housing and Community Development shall identify the current and future housing and community development needs of the District of Columbia; develop a strategy for best meeting those needs; and ensure the planning and coordination of programs, projects and other activities necessary to carry out that strategy.

3. *Functions.*—The Director of the Office of Housing and Community Development shall:

A. Provide the Mayor-Commissioner information and advice on matters pertaining to public and private housing and community development plans, programs, and activities in the District of Columbia.

B. Identify the District's housing and community development needs; recommend to the Mayor-Commissioner plans for meeting those needs. Under the direction of the Mayor-Commissioner establish policies to guide the planning, coordination, and execution of public or joint

public-private programs and projects necessary to carry out those plans.

C. Recommend to the Mayor-Commissioner annual and longer-term housing and community development priorities, goals, and objectives for the District.

D. Coordinate the preparation of the District's submissions for funding housing and community development activities from Federal, District and private sources; recommend to the Mayor-Commissioner the allocation of all non-categorical housing and community development funds provided to support housing and community development activity in the District of Columbia.

E. Coordinate the preparation of that portion of the Comprehensive Plan for the District involving Housing and Community Development, the Capital Improvements Plan, and the Multi-Year Program and Financial Plan and recommend to the Mayor-Commissioner changes in these plans when such changes are deemed essential to the accomplishment of housing and community development goals and objectives.

F. Coordinate and prepare the annual consolidated housing and community development plan and budget for approval by the Mayor-Commissioner.

G. Ensure that all housing and community development plans are coordinated with appropriate Federal and local agencies and departments.

H. Develop with appropriate D.C. Departments and private organizations plans and programs to create and sustain private developer interest and activity in the District of Columbia.

I. Recommend to the Mayor-Commissioner standard policies and procedures for conducting housing and community development activities in the District—e.g., for relocation, land acquisition and disposition and citizen participation.

J. Monitor the implementation and execution of housing and community development programs and projects by the operating units, including regular reports to the Mayor-Commissioner for appropriate action.

K. Evaluate at the direction of the Mayor-Commissioner the effectiveness and efficiency with which housing and community development programs and projects are being carried out to meet the specified goals and objectives as set out by the Mayor-Commissioner.

L. Perform research and collect data and statistics in support of the overall functions of the Office; conduct special planning and management studies; develop and test new program concepts as demonstration or special projects as approved by the Mayor-Commissioner.

M. Serve as the Mayor-Commissioner's representative or alternate as housing and community development member on local interagency committees, task forces and coordinating committees.

N. Coordinate and review at the direction of the Mayor-Commissioner, the presentation of plans, budgets, and proposed programs of the District with regard to housing and community development programs before Congressional committees, Federal bodies, and other government entities—e.g., the Metropolitan Washington Council of Governments.

4. *Transfers of functions and delegated authorities.*—The position of the Assistant to the Mayor-Commissioner and the Office of Housing Programs is abolished and the functions and delegated authorities of the Assistant to the Commissioner for Housing Programs as set forth in the Commissioner's Order No. 69-182 of April 25, 1969, and as amended by Commissioner's Orders 69-546 of October 3, 1969; 71-307 of August 13, 1971; 71-357 of September 20, 1971; 71-392 of November 1, 1971; and 72-223 of August 18, 1972 are transferred to the Office of Housing and Community Development.

5. *Transfers of funds and other resources.*—All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the above functions are transferred to the Director of the Office of Housing and Community Development.

6. *Organization.*—The Director of the Office of Housing and Community Development, in the performance of the functions for which he is responsible, is authorized to establish such organizational components thereunder with such specified functions as he deems appropriate. The officers or employees of the offices whose functions

were transferred under paragraph 4, above, shall continue to exercise their existing duties, powers, and authorities until such time as the Director of the Office of Housing and Community Development shall otherwise provide.

7. *Effective date.*—The provisions of the Order shall take effect as of June 30, 1974.

ORGANIZATION ORDER NO. 46.—DISTRICT OF COLUMBIA DEPARTMENT OF MANPOWER

(Organization Order No. 46, Commissioner's Order No. 74-144, June 29, 1974.)

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, it is hereby ordered that:

1. *Establishment.*—There is established, under the direction and control of the Mayor-Commissioner of the District of Columbia, a District of Columbia Department of Manpower, headed by a Director, appointed by the Mayor-Commissioner, who is authorized to establish such organizational components thereunder as he deems appropriate to carry out the purpose of the Department.

2. *Purpose.*—The Department of Manpower will provide manpower services designed: to improve the capability of the work force to participate in the labor market, by providing assistance in attaining gainful and satisfying employment; to aid in upgrading those in the labor force who are underemployed; and to provide aid to local employers in fulfilling their manpower requirements.

3. *Functions.*—The Director of the Department of Manpower will:

A. Carry out the following programs:

1. Under guidelines set by the Annual Comprehensive Manpower Plan as approved by the Mayor-Commissioner, the Department will develop, operate, administer, and maintain a comprehensive program of employment and training opportunities as described in the Comprehensive Employment and Training Act of 1973 (Public Law 93-203) and provide to the CAMPS Staff the information necessary for the planning, monitoring, and assessment of the program by the Manpower Services Planning Advisory Committee (MSPAC) established by Commissioner's Order No. 74-84.

Manpower Services under this program will be provided by the Department in accordance with Sections B and C below.

Pursuant to Congressional identification of the District as a state for purposes of the enabling legislation, these activities will be performed by the Department in the capacity of a State agency.

2. Administer a State Public Employment Agency as described in Public Law 73-30 as amended (the Wagner Peyser Act) and as it is from time to time augmented by other related Federal manpower legislation, directives or programs, such as the Title IV of the Social Security Act (the WIN Program).

3. A voluntary state apprenticeship program as prescribed by Public Laws 75-308 and 79-387, as amended.

4. Other programs as the Mayor deems appropriate to carry out the mission of the Department.

B. Represent the District of Columbia in making application on behalf of the District of Columbia to, and/or negotiating with, Federal agencies for financial support of the State Agency and manpower services described above.

C. With the approval of the Mayor-Commissioner and in accordance with established District regulations, processes, and procedures make grants (sub-grants) to other units of government, public agencies, and non-profit organizations and request and participate in the preparation of contracts (sub-contracts) with profit-making organizations in the private sector. The Mayor-Commissioner at his discretion may delegate this approval power to the Director of Manpower.

D. Promote the cooperation, participation, and acceptance of the District's manpower plans, objectives, and programs by the citizens, Government officials, community organizations, educational institutions, and employers.

E. Serve as the contact point for District of Columbia manpower matters with the Federal Government, suburban jurisdictions, advisory bodies, public and private groups, and to provide such groups with assistance and information as appropriate.

4. *Effective date.*—This Commissioner's Order shall take effect on July 1, 1974.

ORGANIZATION ORDER NO. 47.—INTERDEPARTMENT COMMITTEE ON ADULT LITERACY

(Organization Order No. 47, Commissioner's Order No. 74-50a, Mar. 29, 1974.)

ORDERED:

That there is hereby established in the Government of the District of Columbia an Interdepartmental Committee on Adult Literacy.

PART I

Purpose.—The purpose of the Committee shall be to serve in an advisory capacity the total adult literacy program in the various departments of the District Government and with Federal, public and private agencies involved in the program.

PART II

Functions.—The Committee shall:

(1) Assist in the continuing development, implementation and coordination of a comprehensive, long-range program to attack and reduce adult illiteracy in the District of Columbia.

(2) Through mutual effort, insure that elements of the adult literacy program are implemented in the D.C. departments and agencies on a timely basis, and coordinate the program with the work of participating Federal, public and private agencies.

(3) Participate in the preparation of applications for grants as one method of financing the adult literacy program.

(4) Participate in the development of annual budget estimates to cover the part of the adult literacy program financed from D.C. appropriated funds.

(5) Develop new ideas and new approaches to the adult literacy problem.

PART III

Composition.—(a) The Committee shall be composed of representatives of the following departments and agencies, and shall be appointed by and represent the heads of these departments and agencies in the development, implementation, and coordination of the adult literacy program:

- (1) D.C. Public Schools
- (2) Office of Budget and Financial Management
- (3) D.C. Teachers College
- (4) Washington Technical Institute
- (5) Federal City College
- (6) Department of Human Resources
- (7) Fire Department
- (8) Metropolitan Police Department
- (9) Department of Recreation
- (10) Department of Economic Development
- (11) Department of Corrections
- (12) Board of Parole
- (13) National Capital Housing Authority
- (14) D.C. Public Library

(b) In addition, members may be invited to serve from agencies under the full administrative jurisdiction of the Commissioner, and from Federal, public and private groups, as the Committee determines appropriate.

(c) Members shall serve without additional compensation.

PART IV

Organization.—The Committee shall determine its own organization. The Committee may select its own Chairman and Vice Chairman. The Committee shall meet at the call of the Commissioner or of its Chairman.

PART V

Term of appointment.—All appointments of members to the Committee shall be for a two year term. Members may be appointed to serve two consecutive terms.

ORGANIZATION ORDER NO. 48.—POLICE AND FIREMEN'S RETIREMENT AND RELIEF BOARD

(Organization Order No. 48, Commissioner's Order No. 74-199, September 25, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, and P.L. 93-407; it is ordered that there be established in the District of Columbia Government under the administrative supervision of the Director of Personnel, Executive Office of the Commissioner, a Police and Firemen's Retirement and Relief Board.

PART I. BOARD COMPOSITION

1. The Board shall be composed of—

(a) members and alternates appointed from among persons who are employees of the District of Columbia, one member and alternate each from the District of Columbia Personnel Office, Corporation Council, Department of Human Resources, Metropolitan Police Force, and the Fire Department of the District of Columbia, and

(b) two members, one of whom shall be a physician, appointed from among persons who are not officers or employees of the District of Columbia.

2. The member and alternate appointed to the Board from the Department of Human Resources shall both be medical officers.

3. The member appointed to the Board from the District of Columbia Personnel Office shall serve as Chairman of the said Board, and in his absence, such member's alternate shall serve as Chairman; and in the absence of both, the member or alternate appointed to the Board from the Corporation Counsel shall serve as Chairman.

4. All authorities and powers exercised by the members of the Police and Firemen's Retirement and Relief Board, and their alternates, shall be in accordance with applicable laws, rules and regulations.

5. The members appointed from among persons who are not officers or employees of the District of Columbia Government shall be appointed for two years and shall be entitled to receive compensation for each day they are actually engaged in carrying out duties vested in the Board in the same manner as persons employed intermittently under Section 3109 of title 5 of the United States Code.

PART II. PURPOSE

The Police and Firemen's Retirement and Relief Board is established for the purpose of insuring that fair and equitable policies and practices are established and applied in connection with the retirement and the relief of members of the:

1. Police and Fire Departments of the District of Columbia.
2. U.S. Park Police Force.
3. Executive Protective Service.
4. U.S. Secret Service, who are subject to the provisions of the Policemen and Firemen's Retirement and Disability Act.

PART III. FUNCTIONS

The functions of the Police and Firemen's Retirement and Relief Board shall be to:

1. Consider all cases for the retirement and the relief of the members listed in Part II; consider all cases of retirees of said organizations who are seeking an increase in the pension relief allowance which they are already receiving; consider all cases of retirees of said organizations who are required to undergo periodic medical examinations in connection with determining whether the relief allowance in such cases should be continued, increased, decreased, or discontinued; consider all applications for the relief of widows, widowers and eligible children of said members; and applications for the lump sum payment benefit provided in cases of performance-of-duty death.

2. Approve, or disapprove, all such cases, and fix the amount of pension relief in each instance, as appropriate, except that proposed actions in connection with the relief or the retirement of the Chief of Police and the Fire Chief shall be submitted to the Commissioner for his approval, or disapproval; and provided that any action taken by said Board, or by the Commissioner in the case of the Chief of Police and the Fire Chief, shall constitute final administrative action.

3. Develop overall policies to insure fair and equitable treatment in the retirement and the relief of individuals coming within the purview of the Police and Firemen's Retirement and Relief Board; and serve in an advisory capacity to the Commissioner and heads of departments and offices in all matters pertaining to the retirement and the relief of such individuals.

4. Perfect and adopt rules of procedure for the conduct and guidance of the Police and Firemen's Retirement and Relief Board.

PART IV. ELIGIBILITY FOR RETIREMENT AND SURVIVOR ANNUITIES

1. The Police and Firemen's Retirement and Relief Board established herein is hereby designated as agent of the Commissioner, to make all findings of fact and conclusions of law necessary in the determination of eligibility for retirement and survivor annuities pursuant to the Policemen and Firemen's Retirement and Disability Act [D.C. Code, § 4-521 et seq.].

2. In making such findings of fact and conclusions of law, the said Board shall consider the reports or recommendations of the Board of Police and Fire Surgeons concerning the physical or mental condition, or both, of the member for whom involuntary separation or retirement is sought, together with all records and testimony of the Board of Police and Fire Surgeons relating to such member, and such records and testimony of any other person bearing on the matter.

3. The authority set forth in subsection (1) of the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-529) to express a judgment as to the disability of a member from performing further duty in his department is hereby delegated exclusively to the Police and Firemen's Retirement and Relief Board.

PART V. SUBPOENA POWERS

The Police and Firemen's Retirement and Relief Board is authorized and empowered to summon any person before it to give testimony, under oath or affirmation, as to any matter affecting retirement or relief of any individual whose retirement or relief is being considered; and any member of the said Board shall have power to administer oaths or affirmations to witnesses appearing before it. Such summons shall be served by a member of the Metropolitan Police or Fire Departments.

PART VI. SECRETARIAL ASSISTANCE

The Chairman of the Police and Firemen's Retirement and Relief Board shall be responsible for arranging for necessary secretarial assistance for the Board, and for seeing that reports and records are prepared and maintained in connection with meetings held, findings and recommendations made, and actions taken.

PART VII. REPEAL OF PREVIOUS ORDERS

All Commissioner's Orders, or parts of Commissioner's Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed.

PART VIII. EFFECTIVE DATE

The provisions of this order shall take effect immediately.

ORGANIZATION ORDER NO. 49.—BOARD OF CONSUMER GOODS REPAIR SERVICES

(Organization Order No. 49, Commissioner's Order No. 74-232, Nov. 12, 1974.)

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, it is hereby ordered that:

PART I. BOARD OF CONSUMER GOODS REPAIR SERVICES

1. *Establishment and purpose.*—There is hereby established, in the Government of the District of Columbia, a Board of Consumer Goods Repair which shall be responsible for the regulation of the consumer goods repair industry in the District of Columbia.

2. *Functions.*—The Board shall administer the program of licensing of consumer goods repair dealers established by City Council Regulation No. 74-3 of March 15, 1974. In pursuance of this responsibility, the Board shall:

A. Conduct from time to time investigations and public hearings to determine the need for regulation of additional repair industry categories.

B. Establish license classifications for consumer goods repair dealers and supervisory inspectors licensed by Regulation 74-3.

C. Establish, in its discretion, advisory panels for each repair industry category required by this regulation to serve as technical consultant to the Board and to assist in the preparation of competency examinations.

D. Develop, after appropriate study, a recommended fee system for repair dealer and supervisory inspector licenses to be presented to the Commissioner within twelve months after the effective date of Regulation 74-3.

E. Devise and administer a competency examination system for the licensing of supervisory inspectors in each repair industry category or specialty covered by Regulation 74-3.

F. Establish pursuant to the D.C. Administrative Procedure Act the necessary rules to carry out the provisions of Regulation 74-3.

G. Issue licenses in accordance with Title III of Regulation 74-3.

3. *Advisory panels.*—Each advisory panel established by the Board under Paragraph 2 C shall consist of three members, to be appointed by the Mayor-Commissioner from recommendations submitted to him by the Board, two of whom shall be representatives of the relevant repair industry category or specialty and one of whom shall not be affiliated with any repair industry category or specialty and one of whom shall not be affiliated with any repair industry category but shall have relevant technical expertise. Tenure for panel members shall be determined by the Mayor-Commissioner.

4. *Composition of the Board.*—The Board shall comprise five members; three of whom shall have no occupational affiliation with any business or industry within the scope of Regulation 74-3, and who shall represent District consumers. Members shall be appointed by the Mayor-Commissioner with the advice and consent of the Council. The term of office of Board members shall be three years, except that initial appointments shall be made as follows: of the members first appointed, two shall be appointed for three years, two shall be appointed for two years, and one shall be appointed for one year. The maximum term of office for any members shall be six years, except that members may be reappointed for an additional term or terms upon the expiration of one year following any six-year term.

Upon the expiration of a member's term, each member shall continue to serve until his or her successor is appointed. Should a vacancy occur through the death, incapacity, resignation, or removal of a member, a successor shall be appointed to complete the unexpired term of that member. The Board shall elect its own officers. The Executive Director of the Office of Consumer Affairs shall participate as an ex-officio non-voting member in all deliberations of the Board which do not conflict with his duties pursuant to Commissioner's Order 73-225.

5. *Compensation.*—Members of the Commission shall serve without compensation except for a reasonable per diem reimbursement.

6. *Administration.*—The Director of the Office of Consumer Affairs shall assist the Board in matters of administration and shall provide it with necessary staff services. Expenses incurred by the Committee as a whole or by individual members thereof, when authorized by the Director of the Office of Consumer Affairs, will become an obligation against funds designated for that purpose.

PART II. DELEGATION OF AUTHORITY

7. The Director of the Office of Consumer Affairs is delegated authority vested in the Mayor-Commissioner by Section 309 of City Council Regulation 74-3, which concerns the appointment of resident agents to represent non-resident dealers; and shall receive such notifications and legal notices and keep such records as are required in this Section.

ORGANIZATION ORDER NO. 50.—OFFICE OF BUDGET AND MANAGEMENT SYSTEMS—MUNICIPAL PLANNING OFFICE

(Organization Order No. 50, Commissioner's Order No. 74-264, Dec. 31, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ORDERED THAT:

A. *Establishment.*—There is hereby established in the Government of the District of Columbia, in the Executive Office of the Mayor-Commissioner, the Office of Budget and Management Systems and the Municipal Planning Office. Both offices shall be headed by directors who shall perform functions transferred, delegated or otherwise assigned to their respective offices and who shall have authority to redelegate such functions as they deem necessary.

B. *Purpose.*—Office of budget and management systems. The office is charged with the responsibility of aiding

the Mayor-Commissioner to (1) execute the budget and financial management responsibilities of the District Government, (2) improve the management and performance of programs and service operations on a District-wide basis, and (3) ensure compliance with prescribed policies, regulations, laws and procedures of the District Government through a continuous program of independent management and fiscal audits.

C. *Purpose.*—*Municipal planning office.* The office is charged with the responsibility for the development and coordination of plans and policies of the District Government and to carry out the provisions of the Self-Government Act (P.L. 93-198) with respect to municipal planning in an efficient and effective manner in accordance with the principles of sound planning with provision for the participation and consultation of residents of the District of Columbia.

D. *Functions.*—The two offices are assigned the functions and responsibilities set out in the accompanying statement announcing their establishment. Subject to my approval, the directors of the two offices are to arrange such appropriate organizational adjustments and changes to carry out the functional assignments there described.

E. *Transfers.*—All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available to the Office of Budget and Financial Management and to the Office of Planning and Management are transferred to the directors of the Office of Budget and Management Systems and the Municipal Planning Office in accordance with their assignments.

The directors shall make such arrangements for these transfers of funds and other resources that may be required to carry out the provisions of this order.

F. *Organization.*—The director of the Office of Budget and Management Systems and the Director of the Municipal Planning Office, in the performance of the functions for which each is responsible, are authorized to alter, modify or establish such organizational components thereunder with such specified functions as are deemed appropriate.

G. *Effective date.*—This order shall take effect on January 1, 1975.

ORGANIZATION ORDER NO. 50 (SUPPLEMENT NO. 1).—FUNCTIONS OF THE OFFICE OF BUDGET AND MANAGEMENT SYSTEMS

(Organization Order No. 50 (Supplement No. 1), Mayor's Order No. 75-41, Feb. 26, 1975.)

This Order is issued by virtue of Reorganization Plan No. 3 of 1967, and in accordance with Public Law 93-198, the District of Columbia Self-Government and Governmental Reorganization Act, and in accordance with Commissioner's Order No. 74-264 of December 31, 1974 (Organization Order No. 50) and Order of the Mayor No. 75-23 of February 5, 1975.

I. *Establishment.*—There is hereby established in the Government of the District of Columbia, in the Executive Office, the Office of Budget and Management Systems, to be headed by a Director who shall perform the functions herein transferred, delegated, or otherwise assigned, and who shall have the authority to redelegate such functions as he deems necessary.

II. *Purpose.*—The Office of Budget and Management Systems is charged with assisting the Mayor to maintain a fiscally sound and responsibly managed government.

III. *Functions.*—The Director of the Office of Budget and Management Systems will:

A. Execute the budget and financial management responsibilities of the District Government.

B. Analyze agency proposals for capital facilities, including program content and significance of such facilities; advise the Mayor in determining the annual capital budget; prepare the annual capital budget and the District of Columbia's Six-Year Capital Improvements Program, assisted and advised by the Capital Improvements Program-Technical Advisory Committee. (CIP-TAC).

C. Administer all borrowing programs for the issuance of long- and short-term indebtedness.

D. Administer the District Government's cash management program, including the investment of surplus funds

in governmental and non-governmental interest-bearing securities and accounts.

E. Conduct multi-year analyses and planning of expenditures and projected revenues.

F. Administer the centralized District Government payroll and retirement system.

G. Govern the accounting policies and systems applying to District agencies and certain other agencies specified in the Home Rule Act, serving as the principal liaison between the D. C. Government, the U. S. Office of Management and Budget, and the U. S. General Accounting Office.

H. Conduct a continuing program of independent fiscal and management audits of District Government operations, and such other investigations and appraisals as the Mayor may direct; act as liaison representative for the Mayor for all external audits of the District Government executive branch.

I. Improve the management and performance of programs and service operations of District agencies by means of performance and productivity measurements and evaluations, contract review, and technical and other assistance to agencies, including the funding of projects requiring skills and resources not currently available within the District Government.

J. Review and coordinate all proposed organizational changes, especially with reference to their budget implications, and assist in the coordination and review of the administrative issuance system.

K. Assure the provision of effective and efficient central data processing services to agencies and programs of the District Government.

L. Allocate positions and provide financial management for all Public Service Employment programs.

M. Conduct such other coordinative and special programs and projects as the Mayor shall assign.

IV. *Transfer of functions.*—The following functions are hereby transferred to the Office of Budget and Management Systems:

A. Those functions of the Office of Budget and Financial Management set forth in Commissioner's Order No. 72-80 (Organization Order 30), April 5, 1972.

B. The functions of the Office of Municipal Audit and Inspections set forth in Commissioner's Order No. 72-177 (Organization Order 33), July 14, 1972.

C. Those functions of the Office of Planning and Management set forth in paragraphs 3h, 3i, 3k, 3l, 3m, and 3n of Commissioner's Order No. 71-307, August 13, 1971.

V. *Delegations and Redelegations of Authority:*

A. The Director of the Office of Budget and Management Systems is the successor to all authority delegated to the Director of the Office of Budget and Financial Management.

B. The Director of the Office of Budget and Management Systems serves as the State Clearinghouse for Federal Assistance for the review, evaluation, and coordination of Federal programs and projects in relation to the District budget.

C. The authority delegated to the Director of the Office of Planning and Management under Commissioner's Order No. 70-230 of June 19, 1970, to enter into agreements on behalf of the District of Columbia with respect to management consulting services to be financed with funds available in the Management Improvement Account, is redelegated to the Director of the Office of Budget and Management Systems.

VI. *Other Transfers.*—All positions, personnel, property, records and unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the above functions, are hereby transferred to the Director of the Office of Budget and Management Systems.

VII. *Organization.*—The Director of the Office of Budget and Management Systems, in the performance of functions for which he is responsible, is authorized to establish such organizational components thereunder with such specified functions as he deems appropriate.

ORGANIZATION ORDER NO. 50 (SUPPLEMENT NO. 2).—FUNCTIONS OF MUNICIPAL PLANNING OFFICE

(Organization Order No. 50 (Supplement No. 2), Mayor's Order No. 75-42, Feb. 26, 1975.)

This Order is issued by virtue of Reorganization Plan No. 3 of 1967, and in accordance with P.L. 93-198, the District of Columbia Self-Government and Governmental Reorganization Act and in accordance with Commissioner's Order No. 74-264, December 31, 1974, (Organization Order No. 50) and Order of the Mayor No. 75-23, February 5, 1975.

Background of Order: Title II of the Self-Government and Governmental Reorganization Act, P.L. 93-198 lodges with the Mayor responsibility to take certain actions with respect to local planning including the following:

(a) To be the central planning agency for the District of Columbia;

(b) To coordinate the planning activities of the District of Columbia;

(c) To prepare and implement the District elements of the Comprehensive Plan for the National Capital;

(d) To establish processes for citizen participation in the planning process; and

(e) To establish procedures for appropriate meaningful consultation with any state or local government or planning agency in the National Capital Region affected by any aspect of a comprehensive plan (including amendments thereto) affecting or relating to the District.

1. *Establishment.*—There is established in the Government of the District of Columbia, in the Executive Office of the Mayor, a Municipal Planning Office headed by a Director, who shall perform the functions delegated, transferred or otherwise assigned to him in this Order, and such functions as will be assigned to him from time to time, and who shall have the authority to redelegate such functions as he deems necessary.

2. *Purpose.*—The Municipal Planning Office shall, on behalf of the Mayor, provide for the development and coordination of plans and policies of the District Government and shall carry out the foregoing provisions of the Self-Government Act (P.L. 93-198) relating to municipal planning and the support of municipal planning in an efficient and effective manner. This should be done in accordance with principles of sound planning, with provision for participation and consultation of residents and for the effective coordination of municipal planning resources.

3. *Functions.*—The Director of the Municipal Planning Office shall be responsible for the following functions:

a. Providing assistance and support to the Mayor and reporting to him with respect to matters relating to his responsibility for planning in the District of Columbia, analysis and coordination of governmental plans and policies affecting the District, and initiation of new programs to meet the needs of the District.

b. Providing support for the planning activities of the municipal government.

c. Providing for the development and implementation of zoning and land use planning, policies and processes.

d. Providing, on behalf of the Mayor, for the development and implementation of the local elements of the Comprehensive Plan for the National Capital established by P.L. 93-198.

e. Developing and proposing, for the consideration of the Mayor, long-range goals, plans and policies for the District Government as a whole; evaluating plans, policies and objectives developed by Federal, regional or local government agencies as they relate to the District; coordinating the preparation of plans by District agencies, provision of technical assistance for such planning as well as development of standards and guidelines; and planning, implementing and administering projects assigned by the Mayor.

f. Promoting the development of a comprehensive and integrated planning process for the District, with particular reference to the participation of citizens in such a process.

g. Development and directing the "State Planning Agency" functions of the District of Columbia for purposes of Comprehensive Planning Assistance to the District as authorized by Section 701 of the Housing Act of 1954, as amended, and policies of the U.S. Department of Housing and Urban Development; working closely with District of Columbia Governmental entities assigned responsibility for housing and community development functions in the development and coordination of their planning activities.

h. Conducting analytical and research studies related to social, economic and environmental planning for the District.

1. Providing planning liaison for the District of Columbia Government with the National Capital Planning Commission, the Metropolitan Washington Council of Governments, the Washington Metropolitan Area Transit Authority, the planning components of the various metropolitan area jurisdictions, and other Federal regional and local agencies engaged in local, metropolitan and regional planning, representing the Mayor as his special assistant for planning before such bodies.

j. Performing the local project planning review functions formerly performed for the District by the National Capital Planning Commission.

k. Participating and assisting in the coordination of capital facilities planning throughout the District Government, and cooperating and working with the Office of Budget and Management Systems in the preparation of the six-year Capital Improvements Program.

l. Developing and carrying out plans, programs and standards for improvement of statistical data and services; conducting a program of statistical services for the District of Columbia.

m. Directing operation of the Service Area System, planning and developing programs for the improvement of the system and encouraging citizen participation and involvement in the planning process and with respect to delivery of municipal services; providing liaison services with the Advisory Neighborhood Councils.

n. Providing ongoing liaison with and necessary staff support to the Complaint Center and through it with other District Government entities with respect to service complaints.

o. Providing customary administrative support services including grants management services for the planning activities herein described; briefing District agencies and citizen groups on planning and planning related activities of the District Government.

p. Supporting the activities of the Zoning Commission and the Board of Zoning Adjustment by providing zoning and planning services as required in accordance with policy guidelines established by the Zoning Commission.

q. Assisting the Zoning Commission and the Board of Zoning Adjustment in making arrangements for required public hearings; maintaining necessary records and files of such proceedings and providing a public information service with respect to the activities and actions of the two bodies.

r. Providing staff support and state agency planning services for the Criminal Justice Coordinating Board; administering and servicing grants to the District of Columbia by the U.S. Department of Justice, assisting components of the Criminal Justice System with planning coordination.

4. *Delegation.*—The Director of the Municipal Planning Office is hereby given responsibility to develop the required local elements of the comprehensive plan and to coordinate the planning activities of the District of Columbia Government on behalf of the Mayor in accordance with P.L. 93-198.

5. *Liaison officers.*—The directors of all departments and agencies of the District Government are directed to designate planning liaison officers to provide coordination between the planning activities of the individual departments and agencies and the Municipal Planning Office in accordance with P.L. 93-198.

6. *Citizens panel.*—A citizens panel broadly representative of all segments of the community, and of the District's various geographical areas, shall be established. It will assist the Mayor in establishing procedures for citizen participation and to advise the Director of Municipal Planning in the preparation of the comprehensive plan. Staff support for the Citizens Panel shall be provided by the Municipal Planning Office. The Director of Municipal Planning shall be an ex-officio member of the Citizens Panel.

7. *Transfer of funds and other resources.*—All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds of the Office of Planning and Management retained in the Municipal Planning Office under Organization Order No. 50 of December 31, 1974 and those funds and positions transferred

to the Municipal Planning Office under the Order of the Mayor 75-23, February 5, 1975 or otherwise made available to the above functions are transferred to the Director of the Municipal Planning Office.

8. *Organization.*—The Director of the Municipal Planning Office in the performance of the functions for which he is responsible, is authorized to alter, modify or establish such organizational components thereunder with such specified functions as he deems appropriate.

9. *Superseded.*—Previous orders establishing functions and duties of the Office of Planning and Management are hereby superseded.

10. *Effective date.*—This Order will take effect immediately.

ORGANIZATION ORDER NO. 51.—OFFICE OF CIVIL DEFENSE

(Organization Order No. 51, Commissioner's Order No. 74-267, Dec. 27, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that Commissioner's Order 71-259 of July 26, 1971 (Replacement for Reorganization Order 49) is replaced in its entirety by the following:

1. *Establishment.*—There is established in the Government of the District of Columbia, in the Executive Office of the Commissioner, the Office of Civil Defense, headed by a Director. The Director of the Office of Civil Defense, in the performance of the functions for which he is responsible, is hereby authorized to establish such organizational components thereunder with such specified functions as he deems appropriate.

2. *Purpose.*—The purpose of the Office of Civil Defense is to assist the Commissioner to minimize and ameliorate the effects on the people, the Government, the institutions and the structures of the District of Columbia of local emergencies, natural disasters or enemy attack. The Office is directed to perform its mission by means of plans and development of systematic methods, with the assistance of other District Government agencies and officials as necessary.

3. *Functions.*—The Office of Civil Defense shall:

A. coordinate the development and preparation, for approval of the Commissioner, of such District Government overall emergency plans as are necessary to minimize the effects of emergency situations on the citizens of the city. Affected District Government agencies shall prepare, and furnish to the Office of Civil Defense, copies of specific emergency operating plans for carrying out assigned responsibilities under provisions of the overall emergency plans approved by the Commissioner.

B. develop and operate such executive communications, information, and warning systems as are necessary to assist the Commissioner and other key officials.

C. provide and operate an Executive Command Center, which shall be staffed 24 hours every day by members of the Office of Civil Defense staff. The center staff shall be augmented by the Director as often as necessary to assist the Commissioner during emergency situations.

D. plan and administer a Disaster Preparedness Program and do all things necessary to meet the requirements of the Disaster Relief Act of 1970 (84 Stat. 1744, P.L. 91-606) as amended by the Disaster Relief Act of 1974 (88 Stat. 144, P.L. 93-288) under the administration of the Director who is hereby designated as the coordination officer for the District of Columbia for purposes of said Acts.

E. perform such other functions relating to emergencies as the Commissioner may assign.

4. Commissioner's Order 73-156, dated July 5, 1973, is hereby rescinded.

ORGANIZATION ORDERS OF THE MAYOR OF THE DISTRICT OF COLUMBIA

Org. Ord.

Nos.

201. Department of Human Resources Advisory Committee on Day Care.

202. Bicentennial Organization.

203. Citizen's Advisory Committee to Reduce Litter.

204. [Unused].

205. District of Columbia Commission on Postsecondary Education.

ORGANIZATION ORDER NO. 201.—DEPARTMENT OF HUMAN RESOURCES ADVISORY COMMITTEE ON DAY CARE

(Organization Order No. 201, Mayor's Order No. 75-88, Apr. 18, 1975.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), Organization Order #137, (Order 63-999), dated April 18, 1963 and subsequently amended by Order 63-1210, G.F.O.—016, dated May 14, 1963, is hereby amended in its entirety to read as follows:

PART I

Establishment.—There is established in the Government of the District of Columbia a Human Resources Advisory Committee on Day Care. This Committee is established to increase citizen participation in the District Government's Human Resources Department Day Care Program and to act in an advisory capacity to the Director of the Department of Human Resources on all matters of general policy involved in the provision of day care services under the District Plan.

PART II

Functions.—The Committee shall:

A. Study and make appropriate recommendation with respect to proposals for new departmental policies and programs, or changes in existing departmental policies and programs affecting provision of day care services in the District of Columbia.

B. Advise on community day care needs and the formulation and execution of long-range plans necessary to satisfy those needs.

C. Advise in coordinating the day care programs and activities of the Department of Human Resources with those of community groups and private and non-profit organizations.

D. Advise in the development of resources and the establishment of standards for day care services in the District of Columbia.

PART III

Composition and membership.—The Committee shall consist of not more than twenty-seven (27) members, appointed by the Director of the Department of Human Resources on the basis of their personal qualifications and demonstrated interest and leadership in the field of day care. One-third ($\frac{1}{3}$) of the appointed membership shall be parents of children in day care. The Committee shall include at least four (4) representatives of the Department of Human Resources—one representative of the Social Rehabilitation Administration, one representative of the Community Health and Hospitals Administration, and two representatives of the Office of Planning and State Agency Affairs (one each from the Division of Licensing and Standards and the Division of Child Development), one representative of the Board of Education, and one representative of the Department of Recreation. Such other appointment shall, to the extent possible, be made in such a manner as to provide a maximum degree of perspective on, and insight into, the day care needs of the community.

PART IV

Term of office.—The terms of office of members of the Committee shall be three years. Should a vacancy occur through the death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of the member. After the expiration of his term each member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member, shall be reappointed as a member until after the expiration of one year from the end of such service.

PART V

Compensation.—Members shall serve without compensation.

PART VI

Organization.—The Committee shall elect its own chairman and otherwise determine its own organization and designate its own officers. Secretarial services shall be furnished by the Department of Human Resources.

ORGANIZATION ORDER NO. 202.—BICENTENNIAL ORGANIZATION

(Organization Order No. 202, Mayor's Order No. 75-106, May 21, 1975.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act, it is hereby ORDERED THAT:

Commissioner's Order 71-443, dated December 17, 1971, and Commissioner's Order 73-275, dated December 13, 1973 are hereby rescinded and replaced by the following:

PART I

Bicentennial Commission:

1. *Establishment and Purpose.*—There is established in the District of Columbia Government the District of Columbia Bicentennial Commission which, working with foundations, corporate and business groups, and in concert with the Bicentennial Assembly, shall develop programs for the observance of the national Bicentennial in the District of Columbia and shall advise the Mayor on policies and actions which the Government of the District of Columbia may adopt as part of the Bicentennial program for the District of Columbia.

2. *Composition.*—The Commission shall comprise the Mayor, the Chairman of the Council of the District of Columbia, the D.C. Delegate to the U.S. House of Representatives, the President of the D.C. Board of Education, the immediate past Chairman of the D.C. Bicentennial Commission, and citizen members appointed by the Mayor. Citizen members shall serve for terms of one year, and the Mayor shall appoint from among them the Chairman and Vice-Chairman of the Commission.

3. *Administration and Compensation.*—Members shall serve without compensation. Appropriate expenses may be reimbursed upon authorization by the Chairman of the Commission from funds designated for that purpose, provided this is done in accordance with laws, policies and practices applicable to the District of Columbia Government. The Commission shall determine its own organization, rules and procedures, and shall establish and fill such additional officer positions from its membership as it may deem appropriate.

PART II

Bicentennial Assembly:

1. *Establishment and Purpose.*—There is established in the District of Columbia Government the District of Columbia Bicentennial Assembly, which working with neighborhood, civic and other private groups, and in concert with the Bicentennial Commission, shall develop programs for the observance of the National Bicentennial in the District of Columbia and shall advise the Mayor on policies and actions which the Government of the District of Columbia may adopt as part of the Bicentennial program for the District of Columbia.

2. *Composition.*—The Assembly shall comprise a broad cross-section of citizens of the District of Columbia. Its membership shall be appointed by the Mayor.

3. *Officers and Administration.*—Members shall serve without compensation; however, appropriate expenses may be reimbursed upon authorization by the Chairman of the Assembly from funds designated for that purpose, provided this is done in accordance with laws, policies, and practices applicable to the District of Columbia Government. The Assembly shall elect its Chairman and such other officers as it shall consider appropriate from among its members and shall establish its own rules and procedures.

PART III

Joint Executive Committee:

1. *Establishment and Purpose.*—There is established a Joint Executive Committee which shall be the policy making body for the Commission and Assembly. The Joint Executive Committee shall take policies, actions and programs as presented by the Commission and Assembly and develop coordinated programs to be recommended to the Mayor for incorporation as part of the Bicentennial Program in the District of Columbia.

2. *Composition.*—The Joint Executive Committee shall be composed of eleven representatives from both the Commission and the Assembly to be chosen by the Commission and Assembly representatives.

3. *Officers and Administration.*—The Joint Executive Committee shall be chaired by the Mayor. In his absence it shall be chaired by the Chairman of the Assembly. The Joint Executive Committee will determine its own rules and procedures, and will define policy procedures and appropriate relationships between the organization and activities of the Commission and Assembly.

PART IV

Office of Bicentennial Programs:

1. *Establishment and Purpose.*—There is established in the Executive Office of the Mayor of the District of Columbia the D.C. Office of Bicentennial Programs to assist the Mayor in acting on the advice and recommendations of the Bicentennial Commission and Assembly and to coordinate the preparations of the District of Columbia Government for the Observance of the National Bicentennial in 1976.

2. *Functions.*—The Director of the District of Columbia Office of Bicentennial Programs shall perform the following functions.

A. Coordinate the District Government's participation in the Bicentennial observance, including the preparation of the District's physical, cultural, environmental, social and economic objectives.

B. Serve as liaison between the departments and agencies of the District Government and the D.C. Bicentennial Commission and Assembly, the American Revolution Bicentennial Administration and other entities that may undertake Bicentennial programs and projects.

C. Provide liaison between the District Government, Federal agencies, international representatives, private agencies and other bodies with regard to Bicentennial programs and projects.

D. Prepare a plan, make arrangements for and coordinate the services of the several agencies and departments of the District of Columbia in carrying out the plans and arrangements as approved, to provide for the public service needs of tourists and other visitors expected during 1976 and the years immediately following. Said plans shall provide for coordination of the services of the District Government with appropriate Federal and private agencies and other bodies.

E. Assist the D.C. Bicentennial Commission and Assembly and the American Revolution Bicentennial Administration in developing and coordinating ceremonial, historical and celebrative events and in welcoming special guests to the City in 1976.

PART V

Rescission.—Commissioner's Order No. 70-186 of May 21, 1970 is hereby rescinded.

PART VI

Effective date.—This Mayor's Order is effective immediately.

ORGANIZATION ORDER NO. 203.—CITIZEN'S ADVISORY COMMITTEE TO REDUCE LITTER

(Organization Order No. 203, Mayor's Order No. 75-180, August 1, 1975.)

By virtue of the authority vested in me by the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), it is hereby ordered that:

I. *Establishment.*—A Citizen's Advisory Committee to Reduce Litter is hereby established in the Executive Branch of the Government of the District of Columbia. This Committee is established to increase citizen participation in the litter reduction program, to act in an advisory and support capacity to the Director of the Department of Environmental Services, and to provide the necessary impetus to launch and sustain a vigorous attack on litter throughout the District of Columbia.

II. *Functions.*—The Committee shall:

A. Study and make appropriate recommendations with respect to proposals for new policies and programs, or changes in existing policies and programs, relating to litter and litter reduction in the District of Columbia.

B. Work with appropriate officials in the D.C. Government in effectuating recommendations of litter-control analysis.

C. Enlist the active participation of business, industry and community organizations to develop, support and implement programs to reduce litter and to change attitudes towards the generation of litter.

D. Help build municipal sanitation as a curriculum subject and encourage and assist in the development of participation projects for school children.

E. Help create a favorable public climate for effective litter control in the community.

F. Help build public support for the government in the steps it takes to strengthen ordinances, technology, and enforcement.

G. Help familiarize all citizens with the necessary practices to follow in reducing litter to a minimum.

H. Help keep citizens constantly reminded of the importance of litter control and of their individual responsibility in making it work.

I. Work with Federal government in effectuating recommendations of litter-control analysis.

III. *Composition and membership.*—Appointments to the Committee shall be made by the Director of the Department of Environmental Services on the basis of personal qualifications and demonstrated interest and leadership. Community organizations, D.C. Schools, communications media, Federal Government, citizens, business and industry shall be represented on the Committee. Other appointments shall, to the extent possible, be made in such a manner as to provide a maximum degree of perspective on, and insight into, the problems of litter in the community. A full-time staff person from the Department of Environmental Services shall coordinate the work of the Committee.

IV. *Term of Office.*—The terms of office of members of the Committee shall be three years. Should a vacancy occur through the death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of the member. After the expiration of his term each member shall continue to serve until his successor is appointed and has qualified. No person who has served six years or more consecutively as a member, shall be reappointed as a member until after the expiration of one year from the end of such service.

V. *Compensation.*—Members shall serve without compensation.

VI. *Organization.*—The Committee shall consist of several subcommittees, including but not limited to, a subcommittee on municipal operations, a subcommittee on business and industry, a subcommittee on community organizations, and a subcommittee on Federal Government. The Chairperson of the Committee will be appointed by the Director of the Department of Environmental Services. The Chairperson will appoint subcommittee chairpersons. Secretarial services shall be furnished by the Department of Environmental Services.

ORGANIZATION ORDER NO. 204.—[UNUSED]

ORGANIZATION ORDER NO. 205.—DISTRICT OF COLUMBIA COMMISSION ON POSTSECONDARY EDUCATION

(Organization Order No. 205, Mayor's Order No. 75-23a, Feb. 1, 1975.)

By virtue of the authority vested in me by section 422 of the District of Columbia Self-Government and Governmental Reorganization Act, and in accordance with Title XII, Section 1202 of the Higher Education Act of 1965, as amended (hereinafter referred to as the Act): IT IS ORDERED THAT:

Commissioner's Organization Order No. 15, which established the District of Columbia Commission on Academic Facilities, is hereby rescinded. There is hereby established a District of Columbia Commission on Postsecondary Education (hereinafter referred to as the Commission) to be composed of members of the general public, and public and private nonprofit and proprietary institutions of postsecondary education.

PART I

Purpose.—The Commission on Postsecondary Education shall act in an advisory capacity to the Director, Department of Human Resources and shall serve as the required State Commission under Title I, Section 105 (Community Services and Continuing Education), Title VIA, Section 603 (Equipment for Undergraduate Instruction), and Title

VIIA, Section 704 (Grants for Construction of Undergraduate Academic Facilities) of the Act. The Commission shall compile comprehensive inventories of, and studies with respect to, all public and private postsecondary educational resources in the District of Columbia, including planning necessary for such resources to be better coordinated, improved, or altered so that all persons within the District who desire, and who can benefit from, postsecondary education may have an opportunity to do so.

PART II

Functions.—The Commission on Postsecondary Education shall:

1. In accordance with Section 1202 of the Act, conduct comprehensive planning for postsecondary education in the District of Columbia. These planning activities shall include the regular acquisition and analysis of statistical data relating to institutions of postsecondary education, and shall augment and be in addition to the planning activities required by Title X, Parts A and B of the Act.

2. In accordance with Title X, Part A, of the Act, develop and recommend a statewide plan for the expansion or improvement of postsecondary educational programs in community colleges or both.

3. In accordance with Title X, Part B, of the Act, initiate and conduct comprehensive planning for an occupational education program for the District of Columbia.

4. In accordance with Section 404 of the Act, review and provide comment and recommendations on applications from institutions for grants for projects or programs for the improvement of postsecondary education to the Director of the Department of Human Resources for transmittal to the U.S. Office of Education.

5. In accordance with Title VIA of the Act, consider applications submitted for Federal grants for Equipment for Undergraduate Instruction and forward the recommended applications for approval to the Director, Department of Human Resources for transmittal to the U.S. Office of Education.

6. In accordance with Title VIIA of the Act, consider applications submitted for Federal grants for Construction of Undergraduate Academic Facilities and forward the recommended applications for approval to the Director, Department of Human Resources for transmittal to the U.S. Office of Education.

7. In accordance with Title I of the Act, consider applications for Federal funding under the Community Services and Continuing Education Program and submit recommendations for funding of applications for approval to the Director, Department of Human Resources for transmittal to the U.S. Office of Education.

PART III

Composition.—The Commission shall consist of not less than twenty-three (23) members appointed by the Mayor on the basis of broad and equitable representation of the general public and public and private nonprofit and proprietary institutions of postsecondary education in the District of Columbia, including community colleges, junior colleges, postsecondary vocational schools, area vocational schools, technical institutes, four-year institutions of higher education and branches thereof. The members of the Commission shall include one (1) representative from each institution of postsecondary education with an enrollment of more than 2,000 students; at least two (2) representatives from public and private nonprofit institutions with enrollments of less than 2,000 students; at least two (2) representatives from private proprietary institutions of postsecondary education; two (2) representatives from the student bodies of institutions of postsecondary education, one (1) from the public institutions and one (1) from the private institutions; two (2) representatives from the District of Columbia Government, one (1) from the legislative branch and one (1) from the executive branch; one (1) representative from the District of Columbia Public Schools; one (1) representative from the District of Columbia Advisory Council on Vocational Education; and six (6) members of the general public. A member may represent more than one of the above constituencies. Each member shall have one (1) vote. A Chairman shall be appointed by the Mayor.

PART IV

Term of office.—The term of office of representatives of institutions of postsecondary education with enrollment of more than 2,000 shall be for three (3) years, and representatives may be re-appointed indefinitely. The terms of office of representatives from institutions of postsecondary education with enrollments of less than 2,000 and from private proprietary institutions shall be for two years and shall rotate among like-governed institutions. The term of office of the representative of the legislative arm of the government shall be for two (2) years, and that of the representative of the executive branch of the Government for three (3) years, and representatives may be re-appointed indefinitely. The terms of office of the representatives of the Public Schools and the Advisory Council on Vocational Education shall be for one (1) year and the representatives may be re-appointed indefinitely. The terms of office of the representatives of the general public shall be for two (2) years, except that of the persons first appointed as members, one-half shall serve for one (1) year, such term to expire June 30, 1975; and one-half shall serve for two (2) years, such term to expire June 30, 1976; general public representatives may serve for six (6) years consecutively and are not thereafter eligible for reappointment for a further one (1) year term.

PART V

Oath of Office.—Members of the Commission shall take the following Oath of Office:

"I, _____ having been duly appointed by the Mayor as a member of the District of Columbia Commission on Postsecondary Education, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Commission to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VI

Compensation.—Members of the Commission shall serve without compensation; however, appropriate expenses may be reimbursed when authorized by the Director of the Department of Human Resources. Expenditures so authorized shall become an obligation against funds so designated.

PART VII

Organization.—Upon recommendation of the Commission, the Mayor shall appoint an Executive Secretary, and a Chairman. The Executive Secretary to the Commission shall have no vote. The Commission shall determine its own organization and may name committees and such officers other than those appointed by the Mayor as it deems necessary. The Commission shall meet at the call of the Mayor, or any officer of the Commission, or at the request of five (5) members of the Commission.

PART VIII

Administration.—The Executive Secretary to the Commission shall administer the program of the Commission, and shall be responsible to the Director, Department of Human Resources. All planning programs, proposals, and reports, and applications for funding approved by the Commission, shall be submitted to the Director, Department of Human Resources for review and approval and for their submission to the U.S. Office of Education.

PART IX

The Commission shall regularly report its activities to the Director of the Department of Human Resources.

ORGANIZATION ACTIONS OF THE COMMISSIONER OF THE DISTRICT OF COLUMBIA

Comm. Ord.

Nos.

71-259. Office of Civil Defense [Replaced by Org. Ord. No. 51].

71-307. Office of Planning and Management [Superseded].

71-392. Office of Planning and Management [Superseded].

71-443. D.C. Bicentennial Commission [Rescinded and replaced by Org. Ord. No. 202].

- Comm. Ord.*
Nos.
72-3. Mayor's Financial Management Improvement Committee [Rescinded].
72-234. D.C. Bicentennial Policy Committee [Rescinded].
73-73. D.C. Environmental Health School.
74-145. Designation of National Capital Housing Authority.
74-146. Planning Responsibilities under P.L. 93-198.
74-237. Utilities Management Function.

tember 20, 1971; 71-392 of November 1, 1971; and 72-223 of August 18, 1972, were transferred to the Office of Housing and Community Development by Organization Order No. 45, dated June 29, 1974.]

ORGANIZATION ACTION—BOARD OF POLICE AND FIRE SURGEONS

(Commissioner's Order No. 70-369, Sept. 28, 1970, as amended by C.O. No. 74-259, Dec. 20, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, IT IS HEREBY ORDERED THAT:

PART I

Board of Police and Fire Surgeons.—A. The existing Board of Police and Fire Surgeons including the Office of the Chairman thereof, is hereby reconstituted, with the same name and with the same functions now performed, including the powers, duties, and authority of all members, officers, and employees assigned thereto: *Provided*, That in all cases involving retirement or involuntary separation from service pursuant to the Policemen and Firemen's Retirement and Disability Act as amended, sections 4-526 through 4-529, D.C. Code, 1973 ed., the duty of the Board of Police and Fire Surgeons shall be that of submitting in writing to the Police and Firemen's Retirement and Relief Board its reports or recommendations concerning the physical or mental condition, or both of the member for whom involuntary separation or retirement is sought. Any member of the Board of Police and Fire Surgeons, and any other person, whose report of the facts or examination of the member formed any part of the basis of such report or recommendation of the Board of Police and Fire Surgeons, shall, when so requested by any member of the Police and Firemen's Retirement and Relief Board, testify thereon before the Retirement and Relief Board with respect thereto and produce before such Board all the records and evidence before, or in the files of, the Board of Police and Fire Surgeons or any such other person concerning the member whose retirement or separation is sought, and such submission and all such records and evidence of the Board of Police and Fire Surgeons and of any such other person shall be considered by the Police and Firemen's Retirement and Relief Board; *Provided further*, that the authority lodged in the Board of Police and Fire Surgeons by subsection (1) of said Act to make the judgment as to the disability of a member from performing further duty in his department, is hereby withdrawn from said Board of Police and Fire Surgeons, and such authority is hereby delegated exclusively to the Police and Firemen's Retirement and Relief Board, established pursuant to Organization Order No. 48.

ORGANIZATION ACTION—OFFICE OF CIVIL DEFENSE

(Commissioner's Order No. 71-259, July 26, 1971, as amended by C.O. No. 73-156, July 5, 1973, establishing an Office of Civil Defense, was rescinded and replaced by Organization Order No. 51, Commissioner's Order No. 74-267, Dec. 27, 1974.)

ORGANIZATION ACTION—OFFICE OF PLANNING AND MANAGEMENT

[The Office of Planning and Management was replaced by the Municipal Planning Office, see Org. Ord. No. 50. [Functions pertaining to the development of accounting policies and systems, as set forth in former subparagraph (o) of paragraph (3) Commissioner's Order No. 71-307, were transferred to the Director of the Office of Budget and Financial Management by Organization Order No. 30, dated Apr. 5, 1972.

[Functions and delegated authorities of the Assistant to the Commissioner for Housing Programs, as set forth in Commissioner's Order No. 71-307, as amended, were transferred to the Office of Housing and Community Development by Organization Order No. 45, dated June 29, 1974.

[Functions of the Office of Planning and Management set forth in paragraphs 3h, 3i, 3k, 3l, 3m, and 3n of Commissioner's Order No. 71-307, Aug. 13, 1971, were transferred to the Office of Budget and Management Systems

ORGANIZATION ACTION—ESTABLISHMENT OF OFFICE AND DEPARTMENTS

[For subsequent transfers of functions referred to in Commissioner's Order No. 69-96, as amended, see Commissioner's Orders (Organization Actions) Nos. 71-255, July 27, 1971; 71-270, July 30, 1971; and 71-307, Aug. 13, 1971; Organization Order No. 30, Apr. 5, 1972; Organization Order No. 33, July 14, 1972; and Organization Order No. 40, Oct. 3, 1973.]

(Commissioner's Order No. 69-96, Mar. 7, 1969, as amended by C.O. No. 69-144, Mar. 31, 1969, C.O. No. 69-339, July 2, 1969, C.O. No. 546, Oct. 3, 1969, C.O. No. 69-614, Nov. 13, 1969, C.O. No. 69-644, Dec. 10, 1969, C.O. No. 70-6, Jan. 12, 1970, C.O. No. 70-83, Mar. 6, 1970, C.O. No. 70-301, Aug. 11, 1970, C.O. No. 70-355, Sept. 14, 1970, C.O. No. 70-369, Sept. 28, 1970, C.O. No. 70-472, Dec. 21, 1970, C.O. No. 71-16, Jan. 26, 1971, C.O. No. 71-188, June 11, 1971, C.O. No. 72-177, July 14, 1972, C.O. No. 72-243, Oct. 4, 1972, C.O. No. 73-95, Apr. 5, 1973.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, IT IS HEREBY ORDERED THAT:

- * * * * *
4. Offices and Departments.
* * * * *

DEPARTMENT OF ECONOMIC DEVELOPMENT

The Director of the Department of Economic Development is responsible for planning, implementing and administering programs for promotion of economic activities in the District; protection of consumers; business and professional licensing and regulation, including examining boards; enforcement of the District's housing, building, mechanical and electrical codes and regulations; enforcement of zoning laws and regulations; providing technical facilities, staff, administrative, housekeeping and fiscal services for the Board for the Condemnation of Insanitary Buildings, Condemnation Review Board and the Alcoholic Beverage Control Board; providing staff support and an intermediate supervisory channel for the Commissioner's Economic Development Committee (O.O. 11, August 6, 1968); maintaining cooperative relationships and liaison with the Public Service Commission, the Minimum Wage and Industrial Safety Board (R.O. 36, June 16, 1953), the Department of Insurance (R.O. 43, June 23, 1953), and the Armory Board. The Director of the Department of Economic Development is hereby delegated final authority to revoke existing permits for projections into public space and to order the removal of such projections.

<i>Organizational entities from which functions are transferred</i>	<i>Functions as stated in (including all amend- ments thereto)</i>
Department of Occupations and Professions-----	R.O. 59, Sept. 15, 1953
Department of Licenses and Inspections -----	R.O. 55, June 30, 1953
Office of Community Renewal----	O.O. 11, Part IV, 4, Au- gust 6, 1968

ORGANIZATION ACTION—OFFICE OF ASSISTANT TO THE COMMISSIONER FOR HOUSING PROGRAMS

(Commissioner's Order No. 69-182, Apr. 25, 1969, as amended by C.O. No. 69-546, Oct. 3, 1969, and C.O. No. 71-392, Nov. 1, 1971.)

[The position of the Assistant to the Mayor-Commissioner and the Office of Housing Programs is abolished and the functions and delegated authorities of the Assistant to the Commissioner for Housing Programs as set forth in the Commissioner's Order No. 69-182 of April 25, 1969, and as amended by Commissioner's Orders 69-546 of October 3, 1969; 71-307 of August 13, 1971; 71-357 of Sep-

by Organization Order No. 50 (Supplement No. 1), Mayor's Order No. 75-41, Feb. 26, 1975.

[Organization Order No. 50 (Supplement No. 2), Mayor's Order No. 75-42, Feb. 26, 1975, provided in part that previous orders establishing functions and duties of the Office of Planning and Management are hereby superseded.]

(Commissioner's Order No. 71-307, Aug. 13, 1971, as amended by C.O. No. 71-357, Sept. 20, 1971; C.O. No. 71-392, Nov. 1, 1971; C.O. 72-80, Apr. 5, 1972; C.O. 73-192, Aug. 24, 1973; and C.O. 73-264, Nov. 8, 1973.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

3. *Functions.* The Director of the Office of Planning and Management shall be responsible for the following functions: a. Assisting the Commissioner in matters relating to his responsibility for planning in the District of Columbia, analysis and coordination of governmental policies affecting the District and initiation of new programs to meet the needs of the District.

o. Providing administrative services to the Zoning Commission and the Board of Zoning Adjustment, and performing staff functions relating to zoning regulations and the zoning map of the District of Columbia.

ORGANIZATION ACTION—OFFICE OF PLANNING AND MANAGEMENT

(Commissioner's Order No. 71-392, Nov. 1, 1971.)

[Functions and delegated authorities of the Assistant to the Commissioner for Housing Programs, as set forth in Commissioner's Order No. 71-392, were transferred to the Office of Housing and Community Development by Organization Order No. 45, dated June 29, 1974.

[Organization Order No. 50 (Supplement No. 2), Mayor's Order No. 75-42, Feb. 26, 1975, provided in part that previous orders establishing functions and duties of the Office of Planning and Management are hereby superseded.]

ORGANIZATION ACTION—D.C. BICENTENNIAL COMMISSION

Commissioner's Order No. 71-443, Dec. 17, 1971, as amended by C.O. No. 73-275, Dec. 13, 1973, establishing the D.C. Bicentennial Commission, was rescinded and replaced by Org. Ord. No. 202, May 21, 1975.

ORGANIZATION ACTION—MAYOR'S FINANCIAL MANAGEMENT IMPROVEMENT COMMITTEE

Commissioner's Order No. 72-3, Jan. 2, 1972, establishing the Mayor's Financial Management Improvement Committee was rescinded by Commissioner's Order No. 73-77, Mar. 28, 1973.

ORGANIZATION ACTION—ORGANIZATION CHANGES OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

(Commissioner's Order No. 72-206, Aug. 8, 1972, as amended by C.O. No. 73-146, June 15, 1973.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

1. *Establishment.*—There is established, in the Department of Economic Development, under the direction and control of the Commissioner, an Alcoholic Beverage Control Board, consisting of three members appointed by the Commissioner, one of whom shall be appointed Chairman by the Commissioner. A quorum shall consist of any two members. Each member of the Alcoholic Beverage Control Board shall maintain residence in the District of Columbia during the term for which he was appointed. Any board member who is not a regular employee of the District of Columbia shall be an intermittent employee of the District of Columbia and shall receive compensation when actually performing service as a Board member from funds designated for that purpose, in accordance with applicable laws and regulations. Of the three persons first appointed as members of the Board, one shall be appointed for two years, one for three years, and one for four years and thereafter all appointments shall be for the term of four years, except such appointments as may be made for the remainder of unexpired terms.

ORGANIZATION ACTION—COORDINATOR FOR FORT LINCOLN NEW TOWN

(Commissioner's Order No. 72-223, Aug. 18, 1972.)

[Functions and delegated authorities of the Assistant to the Commissioner for Housing Programs, as set forth in Commissioner's Order No. 72-223, were transferred to the Office of Housing and Community Development by Organization Order No. 45, dated June 29, 1974.]

ORGANIZATION ACTION—D.C. BICENTENNIAL POLICY COMMITTEE

Commissioner's Order No. 72-234, Sept. 13, 1972, establishing the D.C. Bicentennial Policy Committee, was rescinded by Organization Order No. 36, Commissioner's Order No. 73-60, Mar. 9, 1973.

ORGANIZATION ACTION—TRANSFER OF THE LEGISLATIVE UNIT

(Commissioner's Order No. 72-243, Oct. 16, 1972, as amended by C.O. 73-44, Feb. 22, 1973.)

By virtue of the authority vested in me by Reorganization Plan 3 of 1967, it is hereby ordered that:

1. *Direction.*—The legislative unit created by Commissioner's Order 69-644 of December 10, 1969, and placed in the Office of Planning and Management by Commissioner's Order 71-307 of August 13, 1971, is continued in the Office of Planning and Management for purposes set out in Paragraph 4, below. The head of the unit shall report to and receive direction from the Office of the Mayor-Commissioner.

4. *Administrative Support.*—All administrative, fiscal, and housekeeping services for the unit shall be furnished by the Office of Planning and Management.

ORGANIZATION ACTION—D.C. ENVIRONMENTAL HEALTH SCHOOL

(Commissioner's Order No. 73-73, Mar. 28, 1973.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

Establishment.—The Director of the Department of Environmental Services shall establish and operate an environmental health school for the purpose of remedially training persons who have violated anti-litter Regulations (Article 3, "Deposits on Streets and in Sewers," Police Regulations; Section 8-3:603, "Storage of Solid Wastes," City Council Regulation No. 71-21 (June 29, 1971), Solid Waste Regulations; Article 260, Section 2601, 2602, and 2603, Housing Regulations).

Duties and responsibilities.—The Director of the Department of Environmental Services shall coordinate the operation of the Environmental Health School with the enforcement operations of the Metropolitan Police Department, the Director, Department of Economic Development, and the Corporation Counsel.

The Corporation Counsel shall upon the recommendation of appropriate Department head or his designated agent use the Environmental Health School as an alternative to prosecution for violations of the above cited Regulations when in the Corporation Counsel's judgment that alternative would serve the interest of those Regulations.

The Chief of Police shall enforce anti-litter Regulations, inform violators of this Order, and assist the Corporation Counsel in determining candidates for the Environmental Health School.

The Director of the Department of Economic Development shall enforce the above provisions of the Housing Regulations, inform violators of this Order, and assist the Corporation Counsel in determining candidates for the Environmental Health School.

Effective date.—This Order shall go into effect immediately.

ORGANIZATION ACTION—DESIGNATION OF NATIONAL CAPITAL HOUSING AUTHORITY

Commissioner's Order No. 74-145, June 29, 1974, is set out as a note under section 5-104.

ORGANIZATION ACTION—PLANNING RESPONSIBILITIES UNDER P.L. 93-198

Commissioner's Order No. 74-146, June 29, 1974, is set out as a note under section 1-1002.

ORGANIZATION ACTION—UTILITIES MANAGEMENT FUNCTION

(Commissioner's Order No. 74-237, November 27, 1974.)

I. *Establishment and purpose.*—By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that a Utilities Management Function be established for the Government of the District of Columbia. The purpose is to provide a mechanism for improving the overall management of utility usage and assuring that utility company bills can be processed and paid in a timely and efficient manner.

II. *Designation of central billing offices.*—The following agencies are designated as central billing offices:

A. The Department of Highways and Traffic is hereby designated the central billing office for telephone charges for all District agencies and departments and for utilities charges incurred by the Street Lighting and Traffic Signal Operation Programs.

B. The Department of General Services is hereby designated the central billing office for electricity (excluding charges associated with the Street Lighting and Traffic Signal Operation Programs), gas, and miscellaneous utilities charges for all District agencies and departments.

III. *Responsibilities of the central billing offices.*—The Department of Highways and Traffic and the Department of General Services shall carry out the following responsibilities for the utilities within their respective jurisdictions, as set out in Section II of this Order:

A. Receive all bills for utility services rendered to District agencies and review them to certify that each invoice represents a valid account that has been authorized on behalf of a District agency or department or is a justifiable charge duly authorized under a District Government contract.

B. Group validated bills by user agency and forward the original and one copy to the District Accounting Office (Office of Budget and Financial Management) within five (5) working days after receipt of the bill.

C. Review and verify reports of billing discrepancies submitted by District agencies and make necessary adjustments in subsequent billings.

D. Review and validate past due charges for utility services received by District agencies and departments.

E. Review and revise as necessary utility company listings that are used for billing purposes. When appropriate, request a company to modify the listings so that the District agencies receiving service and the relevant accounting codes can be more easily identified. Necessary accounting code data shall be developed in cooperation with the District Accounting Office, OBFM.

F. Develop and issue instructions and guidelines for the heads of District agencies to use in carrying out their responsibilities in relation to the utilities management function.

IV. *Responsibilities of the district accounting office, OBFM.*—The District Accounting Office, OBFM shall carry out the following responsibilities in relation to the utility management function:

A. Audit, record, and pay validated utility bills within five (5) working days after receipt of the invoices from the central billing offices.

B. Transmit copies of the paid utility bills, including payments for long-distance telephone calls, to the user agencies.

C. Maintain records of agency certificates of payments for long-distance calls.

D. Develop and issue procedures to ensure that District agencies encumber sufficient funds to meet utility costs.

E. Develop and issue procedures to ensure that consolidated payments to utility companies are made in a timely fashion.

V. *Responsibilities of district agencies and departments.*—Each District agency or department shall carry out the following responsibilities in relation to the utilities management function:

A. Appoint a Utilities Coordinator and inform the central billing offices of the name and telephone number of the Coordinator.

B. Establish consolidated MERs for estimated utilities costs in accordance with Commissioner's Memorandum 74-88 (June 12, 1974).

C. Review copies of paid bills transmitted by the District Accounting Office, OBFM, and identify discrepancies. Notify the appropriate central billing office of any discrepancies.

D. Ensure compliance with Section 4 of Public Law 68-76 (May 10, 1939), which prohibits the use of appropriated funds to pay for long-distance telephone calls made for other than official purposes and requires certification by the agency or department head or his delegate of all authorized calls. To ensure compliance, each agency shall:

1. Review copies of paid bills for long-distance telephone calls provided by the District Accounting Office, OBFM.

2. Certify one copy of the voucher for an authorized call and return to the District Accounting Office, OBFM. The certification should be in the following form:

Pursuant to Section 4 of the act approved May 10, 1939 (53 Stat. 738), I certify that the use of the telephone for the official long-distance calls listed herein was necessary in the interest of the Government.

Signed _____
Head of Department

3. Notify the District Accounting Office, OBFM, of all unauthorized long-distance calls.

4. Ensure that reimbursement is received from District employees who placed unauthorized long-distance calls.

E. Prepare and submit to the District Accounting Office transfer vouchers (D.C. 111) to reflect the proper distribution of utilities charges and to correct any errors. Transfer vouchers should be submitted at least once every quarter.

VI. *Delegation of authority.*—The authority vested in the Mayor-Commissioner by Reorganization Plan No. 3 of 1967 to sign documents authorizing payment to the utilities companies is hereby delegated to the Accounting Officer, District Accounting Office, OBFM.

VII. *Superseding of prior orders.*—This Order supersedes Commissioner's Order 74-155 (July 17, 1974).

VII. *Effective date.*—The provisions of this Order shall go into effect immediately.

ORGANIZATION ACTIONS OF THE MAYOR OF THE DISTRICT OF COLUMBIA

Mayor's Ord.
Nos.

75-228. Hackers' License Appeal Board.

ORGANIZATION ACTION—HACKERS' LICENSE APPEAL BOARD

(Mayor's Order No. 75-228, Oct. 24, 1975.)

By virtue of the authority vested in me by section 422(6) of the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), it is hereby ordered that:

SECTION I

The Director of the Department of Transportation is delegated the authority to appoint the Chairman of the Hackers' License Appeal Board, provided that such Chairman shall be selected from among the senior employees of the Department of Transportation. Such appointment shall be for one year unless sooner terminated by the appointing authority.

SECTION II

All duties and functions heretofore vested in the Mayor or delegated to the Executive Secretary are hereby delegated to the Director of the Department of Transportation.

SECTION III

The Department of Transportation shall provide the necessary administrative services for the Hackers' License Appeal Board.

SECTION IV

This Order shall become effective November 10, 1975.

¹ So in original, probably should be "VIII".

TITLE 2.—DISTRICT BOARDS AND COMMISSIONS

Chap. Sec.
12. Boxing and Wrestling Commission..... 2-1201

Chapter 1.—HEALING ARTS PRACTICE

SUBCHAPTER 1.—LICENSURE AND OTHER REGULATORY PROVISIONS

§ 2-103. Commission on Licensure—Creation—Seal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-103a. Standards of education and training—Register of approved schools and hospitals—License on years of practice—Graduates of foreign medical schools.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-105. Power to appoint and discharge examiners and other employees—Contract for quarters and supplies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-114. Examinations—Time of holding—Notice—Publication.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Costs of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 2-132. Enjoining unlawful practice of healing art—Procedure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-133. Exemptions from operation of license laws—Officers of Federal Government—Consultants—Treatment of specified patients—Doctors employed by District.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-137. Enforcement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-141. Delegation of functions of "Commission"—Definition.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—ANATOMICAL BOARD

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2-259, 3-213a, 27-131.

§ 2-201. Anatomical Board of the District of Columbia—Creation, duties, and powers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-202. Dead bodies for burial at public expense to be reported to board—Removal—Exceptions.

CROSS REFERENCES

Funeral and burial expenses,

Indigents and wards of District, see § 3-213a.

Public assistance recipients, see § 3-213.

§ 2-204. Bond to be furnished by school receiving bodies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia, and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2A.—HUMAN TISSUE BANKS

§ 2-252. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-253. Tissue bank licenses and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-258. Office of the Chief Medical Examiner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-260. Coordination of act with reorganization plan No. 5.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-261. Blood banks—Authority to transfer blood components within District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—DENTISTS

§ 2-301. Board of Dental Examiners—Appointment—Qualifications—Eligibility—Term of office.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-302. Officers—Bond—Rules and regulations for admission to and practice of dentistry—Dental internes for hospitals—Sessions of board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-306. Annual report of finances and official acts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-308. Application for license—Examination—Admission without examination—Reciprocity with States or Territories—Waiver of examination.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-309. License—Form and execution—Registration—Duplicate licenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-309a. Special licenses—Applicability of other sections.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-331. Rules and regulations—Promulgation—Notice.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

Chapter 4.—NURSES, PHYSICAL THERAPISTS, AND PSYCHOLOGISTS

SUBCHAPTER I.—REGISTERED NURSES

§ 2-402. Examining board—Constitution—Qualifications—Tenure—Removal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-403. Examining board—Organization—Officers—Duties—By-laws—Registration of nurses—Examinations—Notice—Inspection of schools.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-406. Annual registration—Nurses—Training schools—Cancellation by failure to reregister—Restoration.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-408. Expenses to be paid from registration fees—Salaries and allowances—Audit—Annual report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—PRACTICAL NURSES

§ 2-421. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-425. Commissioner authorized to delegate functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-426. Establishment of Practical Nurses' Examining Board—Composition—Terms—Compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-427. Rules and regulations—Curricula and standards for nursing schools—Examination and licensing—Renewal of licenses—Authority to make studies and investigations, subpoena witnesses—Application to compel attendance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-428. Qualification requirements—Written examination—Exception—Application fee—Closed and reopened applications.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-429. Conditions for issuance of license without written examination.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-430. License to be renewed annually—Processing of renewal applications—Reinstatement of lapsed licensees—Nonpracticing list of licensees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-431. Applications to operate a school of practical nursing—Commissioner to pass on qualifications of applicants—Survey of approved schools for maintenance of standards—Removal procedure of schools from accredited list.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-432. Fixation of miscellaneous fees—Payment into the Treasury.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-433. Denial, revocation, or suspension of licenses—Procedure—Lists of persons denied licenses may be furnished upon written request to boards of examiners of States, Territories, or foreign countries.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-434. Review of orders and decisions of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-435. Selling, aiding, or abetting in the sale of fraudulent licenses or diplomas—Practicing as a licensed practical nurse under false licenses or diplomas—Use of false designation tending to imply that a person is a licensed practical nurse—Practicing under a suspended or revoked license.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER III.—PHYSICAL THERAPISTS

§ 2-451. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-454. Commissioner authorized to delegate functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-455. Establishment of board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-456. Powers and duties—Register of physical therapists and approved schools—Studies and investigations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-457. Registration of qualified applicants—Issuance of certificates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-458. Registration without examination.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-459. Registration after examination.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-460. Reciprocity.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-461. Renewal of registration—Nonpracticing therapists.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-462. Denial, revocation, and suspension of registration.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-463. Court review.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-464. Unauthorized practice of physical therapy.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-468. Fees and charges—Public hearings to change fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-471. Reorganization.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER IV.—PSYCHOLOGISTS

§ 2-481. Congressional declaration.

SHORT TITLE

Section 201 of Act Dec. 7, 1974, Pub. L. 93-515, title II, 88 Stat. 1615, provided: "This title [amending §§ 2-487, 2-492 to 2-494, and enacting provisions set out in a note under § 2-492] may be cited as the 'Practice of Psychology Act Amendments'."

§ 2-482. Definitions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-484. Practice of psychology without license or certificate prohibited—Exemptions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-485. Duties of Commissioner—Board of Psychologist Examiners—Records.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-486. Qualification requirements—Written examination—Application fee.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Constitutionality**

District of Columbia Practice of Psychology Act's [this subchapter] irrefutable presumption of professional incompetence absent a graduate degree deprived practitioner of 14 years of his constitutionally recognized interest in practice of psychology in violation of due process clause of Fifth Amendment, which guarantees practitioner some alternative means of demonstrating his professional competence, in nature of a "grandfather" concession to psychologists practicing at time the licensure requirement was enacted. *J. R. Berger v. Board of Psychologist Examiners* (1975, 521 F. 2d 1056, 172 U.S. App. D.C. 396; rem'g 313 A. 2d 602).

§ 2-487. License without examination.

(a) Notwithstanding any other provision of this subchapter, a license shall be issued without examination to any applicant who is of good moral character, who, at any time during the twelve-month period preceding the effective date of this subchapter, maintained a residence or office, or participated in psychological practice acceptable to the Mayor, in the District of Columbia, and who, within one year after the effective date of this subchapter, submitted an application for license accompanied by the required fee, and who—

(1) holds a doctoral degree in psychology or forty-five credit hours taken subsequent to a bachelor's degree in courses related to psychology, from accredited colleges or universities, and has engaged in psychological practice acceptable to

the Mayor for at least two years prior to the filing of such application pursuant to this subchapter;

(2) holds a master's degree in psychology or twenty-four credit hours taken subsequent to a bachelor's degree in courses related to psychology, from accredited colleges or universities, and has engaged in psychological practice acceptable to the Mayor for at least seven years prior to the filing of such application pursuant to this subchapter; or

(3) presents evidence of completion of a curriculum of study acceptable to the Mayor, taken subsequent to a bachelor's degree in psychology, in courses related to psychology from an institution outside the United States acceptable to the Mayor, and has engaged in psychological practice acceptable to the Mayor for at least seven years prior to the filing of such application pursuant to this subchapter.

(b) For purposes of subsection (a) of this section, the term—

(1) "courses related to psychology" means any combination of the following behavioral science courses not necessarily in one department of one school: human development, education, educational psychology, guidance, counseling, guidance and counseling, vocational counseling, school psychology, school guidance, family counseling, counseling and psychotherapy, special education, learning disabilities, anthropology, sociology, human ecology, social ecology, rehabilitation counseling, group counseling and psychotherapy, or any substantially similar field of study acceptable to the Mayor; and

(2) "psychological practice acceptable to the Mayor" includes any job in which the job title or description contains any term acceptable to the Mayor, or any of the following terms: psychologists, psychotherapy, group therapy, family therapy, art therapy, activity therapy, psychometry, measurement and evaluation, psychodiagnosis, pupil personnel services, counseling and guidance, special education, rehabilitation, or any job in which the person or organization was recognized or reimbursed under public or private health insurance programs by reason of being engaged in psychological practice.

(Jan. 8, 1971, Pub. L. 91-657, § 8, 84 Stat. 1958; Dec. 7, 1974, Pub. L. 93-515, title II, § 202(5), 88 Stat. 1616.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The effective date of this subchapter, referred to in subsec. (a), is prescribed by sec. 20 of Act Jan. 8, 1971, set out as a note under § 2-481 of the main 1973 ed. of the Code. The subchapter became effective ninety days after Jan. 8, 1971.

AMENDMENT

1974—Section 202(5) of Act Dec. 7, 1974, Pub. L. 93-515, amended section generally. For provisions prior to amendment, see main 1973 ed. of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 2-492.

NOTES TO DECISIONS

Construction

In defining what constitutes a "master's degree in psychology" within meaning of this section providing for issuance of license to applicant who holds a master's degrees in psychology, the Board of Psychologist Examiners was not required to give absolute deference to whether a particular college or university labeled the master's degree as one in "psychology"; Board could properly adopt regulation requiring degree to include at least 24 semester hours in psychology course beyond the undergraduate level. *M. E. Berl v. Board of Psychologist Examiners of the District of Columbia* (D.C. App. 1974, 322 A.2d 274).

In applying regulation defining term "master's degree in psychology" as used in this section to mean a master's degree awarded pursuant to completion of a curriculum in which at least 24 semester hours shall have been psychology courses beyond the baccalaureate level, the Board of Psychologist Examiners was required to look to the substance of the courses for which credit was sought and not the arbitrary happenstance of how the university organized its academic department; Board was required to look to the substance, not the form of the master's degree. *Id.*

§ 2-488. Reciprocity.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-489. Regulations—Fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-490. Renewal of license or certificate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-491. Denial, revocation, and suspension of license or certificate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-492. Procedure for suspension or revocation of license or certificate—Hearing—Review of decision.

* * * * *

(C) Any person aggrieved by a final decision or a final order of the Mayor under subsection (B) of this section may seek review of such decision or order in the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act [D.C. Code, secs. 1-1501 to 1-1510].

(D) In hearings conducted pursuant to subsection (B) of this section, the Mayor may administer oaths and affirmations, and may require by subpoena or otherwise the attendance and testimony of witnesses and the production of such books, records, papers, and documents as he may deem advisable in carrying out his functions under this subchapter. In the case of contumacy or refusal to obey any such subpoena or requirement of this subsection, the Mayor may make application to the Superior Court of the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as contempt of court any failure to comply with such order. (As amended Dec. 7, 1974, Pub. L. 93-515, title II, § 202(1), (2), 88 Stat. 1615.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 202(1), (2) of Act Dec. 7, 1974, Pub. L. 93-515, amended subsecs. (C) and (D) generally. For provisions prior to amendment, see main 1973 ed. of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 203 of Act Dec. 7, 1974, Pub. L. 93-515, title II, 88 Stat. 1616, provided: "The amendments [to §§ 2-492 to 2-494] made by paragraphs (1) through (4) of section 202 of this title shall take effect with respect to petitions filed after the date of the enactment of this title for review of decisions or orders."

NOTES TO DECISIONS

Review

Practitioner of 14 years, who subsequent to passage of District of Columbia Practice of Psychology Act [this subchapter] applied for license, and whose application was denied by Board of Psychologist Examiners because of his lack of required academic degrees, can properly avail himself of statutory review procedure outlined in this section in order to prosecute constitutional challenge that the Board's refusal to test his professional competence by some standard other than his academic credentials constituted a violation of fundamental due process, and is not limited to interposing his constitutional claims as a defense to criminal proceedings for violating licensure requirement. *J. R. Berger v. Board of Psychologist Examiners* (1975, 521 F.2d 1056, 172 U.S. App. D.C. 396; rem'g 313 A.2d 602).

§ 2-493. Penalties.

Any person who shall practice psychology, as defined in this subchapter, without having a valid, unexpired, unrevoked, and unsuspended license or certificate of registration issued as provided in this subchapter, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500, or confined in jail for not more than six months, or both. Prosecutions shall be conducted in the name of the District of Columbia in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants. (Jan. 8, 1971, Pub. L. 91-657, § 14, 84 Stat. 1960; Dec. 7, 1974, Pub. L. 93-515, title II, § 202(3), 88 Stat. 1615.)

AMENDMENT

1974—Section 202(3) of Act Dec. 7, 1974, Pub. L. 93-515, amended the second sentence generally. Prior to amendment, the sentence read: "Prosecutions shall be in the

name of the District of Columbia by the Corporation Counsel or one of his assistants."

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 2-492.

§ 2-494. Enjoining unauthorized practice of psychology.

The unlawful practice of psychology, as defined in this subchapter, may be enjoined by the Superior Court of the District of Columbia on petition by the Corporation Counsel for the District of Columbia, upon a finding that the person sought to be enjoined has committed a violation of the provisions of this subchapter. In any such proceeding it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found guilty of the unlawful practice of psychology, the court shall enjoin him from so practicing unless and until he has been duly licensed. The remedy by injunction herein given may be imposed in addition to, or in lieu of, criminal prosecution and punishment as provided in section 2-493. (Jan. 8, 1971, Pub. L. 91-657, § 15, 84 Stat. 1960; Dec. 7, 1974, Pub. L. 93-515, title II, § 202(4), 88 Stat. 1616.)

AMENDMENT

1974—Section 202(4) of Act Dec. 7, 1974, Pub. L. 93-515, amended the first sentence by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 2-492.

§ 2-495. Commissioner to enforce subchapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—OPTOMETRISTS

§ 2-503. Board of Optometry—Qualifications—Tenure—Oath—Removal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-505. By-laws and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-506. Secretary-treasurer to give bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-507. Secretary-treasurer to receive compensation and pay expenses out of funds in custody of board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-508. Official seal—Records—Reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-512. Changes in educational standards authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—PHARMACY

§ 2-606. Renewal of licenses or permits to sell poisons—Renewal obtained by fraud—Failure of board to renew—Hearings—Attendance of witnesses—Report of findings—Revocation of license—Review in District of Columbia Court of Appeals—Public display of license.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-607. Board of Pharmacy—Creation—Appointment—Tenure—Removal—Oath—Meetings—Seal—Bond of treasurer—Duty to examine applicants.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-608. Board of Pharmacy to have same powers as Commission on Licensure to Practice the Healing Art—Accounting—Records—Reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-609. Fees—Expenses—Compensation of Board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—PODIATRY

§ 2-701. Board of Podiatry Examiners—Appointment—Term of office—Eligibility—Qualifications.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-702. Officers—Bond—Rules and regulations for admission to practice—Seal—Record of proceedings—Register of credentials and of licenses issued or revoked—Certified copy as evidence—Quorum—Annual report of finances and official acts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-711. "Practice of podiatry" defined.

NOTES TO DECISIONS

Medicaid coverage

Limiting podiatric services that podiatrists may provide under District of Columbia Medicaid plan while permitting physicians to furnish a full range of podiatric care does not violate Medicaid provisions of the Social Security Act or implementing regulations. *District of Columbia Podiatry Society et al. v. District of Columbia et al.* (1975, 407 F.Supp. 1259).

§ 2-719. Rules and regulations—Promulgation—Notice.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

Chapter 8.—VETERINARIANS

§ 2-801. Board of Examiners in Veterinary Medicine—Creation—Appointment, tenure, and removal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-802. Election of officers—Rules and regulations—Register of applicants—Bond—Reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-803. Applications for license—Qualifications—Fees — Expenses — Examinations — Applications preserved.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-804. Reciprocal relations with similar boards.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-806. Appeal from board—Board of review—Fees and compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-810. Revocation of licenses—Causes—Procedure—Appeals—Costs.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 9.—ACCOUNTANTS

§ 2-911. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-913. Board of Accounting—Corporation, qualifications, tenure, compensation, and removal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-914. Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-915. Certified public accountants—Issuance of certificate—Qualifications—Prior applications and certificates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-916. Education and experience required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-917. Waiver of examination and endorsement of C.P.A. certificate—Rights of holder of endorsed certificate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-918. Registration of certified public accountants—Failure to register.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-919. Registration of partnerships practicing public accountancy—Requirements—Use of titles.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-920. Hearings, and revocation, suspension, or denial of certificate, etc.—Censure—Procedure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-921. Witnesses and records at hearings—Nature of hearings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-922. Revocation or suspension of partnership registrations—Censure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-923. Administrative procedure for public hearings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-924. Issuance of new certificate, etc. after revocation—Permitting registration after registration revoked.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-925. Noncertified public accountants as employees or assistants—Temporary practice in District by nonresident certified public accountants.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-926. Penalty for violations—Prosecutions by Corporation Counsel—Jurisdiction.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-930. Fees for costs of administration—Disposition of funds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—ARCHITECTS

§ 2-1001. Board of Examiners—Creation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1003. Tenure—Filling vacancies.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1004. Oath of office.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1010. Roster of architects—Report.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1023. Fees.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1028. Procedure for revocation—Appeal.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1029. Attendance of witnesses and production of documents.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—BARBERS**§ 2-1102. Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1103. Board of Barber Examiners—Qualifications—Tenure—Removal—Register—Power to make rules and regulations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1112. Conduct of examinations—Expenses and compensation—Appointment of clerk and inspectors—Qualifications.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1114a. Authority to prescribe regulations for posting prices of services—Authority to impose fine—Limitation of fine.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 12.—BOXING AND WRESTLING COMMISSION**SUBCHAPTER I.—BOXING COMMISSION ACT OF 1934**

Sec.

2-1201 to 2-1209. Repealed.

SUBCHAPTER II.—BOXING COMMISSION ACT OF 1944

2-1210 to 2-1226. Omitted.

SUBCHAPTER III.—BOXING AND WRESTLING COMMISSION ACT OF 1975

2-1231. Purpose.

2-1232. Definitions.

2-1233. Statement of authority.

2-1234. Establishment of Commission.

2-1235. Jurisdiction.

2-1236. Powers.

2-1237. Administration.

2-1238. Violations of Commission rules—Penalties.

2-1239. Liability of Commission members.

SUBCHAPTER I.—BOXING COMMISSION ACT OF 1934

§§ 2-1201 to 2-1209. Repealed. Dec. 20, 1944, 58 Stat. 826, ch. 612, § 7.

SUBCHAPTER II.—BOXING COMMISSION ACT OF 1944

§§ 2-1210 to 2-1226. Omitted.

Sections 2-1210 to 2-1226, Act Dec. 20, 1944, ch. 612, 58 Stat. 823, as amended Aug. 19, 1950, ch. 762, 64 Stat. 466; July 5, 1952, ch. 577, 66 Stat. 392; Aug. 19, 1964, Pub. L. 88-448, § 401(a), 78 Stat. 489.

§ 2-1210 abolished the former Boxing Commission, created a new Boxing Commission, and contained provisions relating to its composition and requiring an annual report.

§ 2-1211 related to the appointment and compensation of personnel.

§ 2-1212 related to powers and duties.

§ 2-1213 related to permits, and examination of accounts and records.

§ 2-1214 related to licenses.

§ 2-1215 required conformity to rules governing contests.

§ 2-1216 related to fees for licenses and permits.

§ 2-1217 related to application for license, and posting of bond.

§ 2-1218 related to payment to Commission of percentage of gross receipts from admissions etc., reports, and contents of admission tickets.

§ 2-1219 provided for covering receipts into trust fund, payment of salaries and expenses, and sale and redemption of bonds.

§ 2-1220 related to quarterly audit of accounts.

§ 2-1221 related to oaths, witnesses, and subpoenas.

§ 2-1222 related to personal liability of Boxing Commissioners.

§ 2-1223 related to penalties for violations.

§ 2-1224 related to prosecution for violations.

§ 2-1225 defined "person".

§ 2-1226 related to compensation of Boxing Commissioners.

SUBCHAPTER III.—BOXING AND WRESTLING COMMISSION ACT OF 1975

§ 2-1231. Purpose.

It is the purpose of this subchapter to create a Boxing and Wrestling Commission for the District of Columbia with the authority to promulgate rules and regulations and to regulate boxing, wrestling, and martial arts events within its jurisdiction. (Oct. 8, 1975, D.C. Law 1-20, § 2, 22 DCR 1998.)

EFFECTIVE DATE

Section 11 of Act Oct. 8, 1975, D.C. Law 1-20, provided that "This act [enacting this subchapter and amending § 47-2344a(d) (3)] shall become effective by operation of Section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. 93-198, 87 Stat. 814 [§ 1-147(c) (1)]."

SHORT TITLE

The first section of Act Oct. 8, 1975, D.C. Law 1-20, provided "That this act [enacting this subchapter and amending § 47-2344a(d) (3)] may be cited as the 'District of Columbia Boxing and Wrestling Commission Act'."

§ 2-1232. Definitions.

For purposes of this subchapter, the term or terms—

(a) "person" means an individual, partnership, corporation, association, or club.

(b) "Mayor" and "Council" have the meanings given in section 1-122.

(c) "Commission" means the District of Columbia Boxing and Wrestling Commission.

(d) "School, college, or university" means every school, college, or university supported in whole or in part from public funds and every other school, college or university supported in whole or in part by a religious, charitable, scientific, literary, educational or fraternal organization which is not operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(e) "Participants" means all boxers, wrestlers, performers of martial arts, seconds, managers, matchmakers, promoters, referees, judges, timekeepers, announcers, ushers, ticket sellers, advertising and public relations personnel, and other persons that the Commission may designate who are involved or connected with, other than as a spectator, boxing, wrestling or martial arts contests, matches, exhibitions, or showings, professional as well as amateur, to be held, given, or shown within the District of Columbia.

(f) "Contestants" means boxers or wrestlers or practitioners of the martial arts.

(g) "Martial Arts" means Karate, Judo, Kung Fu, Jujitsu, Tae Kwon Do, Aikido, and other such forms of self-defense, sport, or weaponry. (Oct. 8, 1975, D.C. Law 1-20, § 3, 22 DCR 1998.)

EFFECTIVE DATE

See note under § 2-1231.

§ 2-1233. Statement of authority.

The authority of the Council to establish a Boxing and Wrestling Commission is granted in sections 1-144(a) and (b). (Oct. 8, 1975, D.C. Law 1-20, § 4, 22 DCR 1999.)

EFFECTIVE DATE

See note under § 2-1231.

§ 2-1234. Establishment of Commission.

(a) There is hereby created a District of Columbia Boxing and Wrestling Commission to consist of three members nominated by the Mayor and approved by the Council.

(b) Other than as provided in subsection (g) of this section, the term of office of a member of the Commission shall be three years.

(c) Whenever a vacancy on the Commission occurs before the end of a term, the Mayor, with the consent of the Council, may appoint a person to complete the remaining period of that term.

(d) A Commission member may be removed by resolution of the Council—

(i) for good cause shown, or

(ii) upon the written recommendation of the Mayor.

(e) The members of the Commission shall be residents of the District of Columbia for the duration of their term.

(f) The members of the Commission shall receive remuneration for their services in an amount to be determined by the Mayor at such time as the Commission is deemed established in accordance with subsection (g) of this section, provided that no such member shall receive remuneration in excess of \$75 per diem.

(g) The Mayor shall, within 30 days of October 8, 1975, nominate an individual to serve as Chairperson of the Commission for three years, and two more individuals to serve as members for two years, and one year respectively. The Council shall confirm or reject these nominees within 30 days of their nomination, or, in the absence of such action within 30 days, such nominees shall be deemed confirmed. When at least two members have been confirmed, the Commission shall be deemed established. (Oct. 8, 1975, D.C. Law 1-20, § 5, 22 DCR 2000.)

CODIFICATION

The text of subssecs. (b) and (c) as published in 22 DCR 2000 contained typographical error; accordingly, the text is based on the wording of the Act as it was published in 22 DCR 651.

CODIFICATION

In subsec. (g), "October 8, 1975" has been substituted for "the effective date of this act".

EFFECTIVE DATE

See note under § 2-1231.

§ 2-1235. Jurisdiction.

(a) The Commission shall have and hereby is vested with the sole direction, management, control

and jurisdiction over all boxing, wrestling, and martial arts contests, matches, exhibitions, and showings, professional as well as amateur, to be conducted, held, given, or shown, within the District of Columbia. The Commission is hereby given control, authority and jurisdiction over all licenses and permits to hold boxing, wrestling and martial arts contests, matches, and exhibitions for prizes or purses or in which a fee or price in money or value is charged or for which revenue of any type is received, and over all licenses or permits to participants in boxing, wrestling, or martial arts contests, matches or exhibitions; this section shall not be construed, however, to preclude the Commission from differentiating between professional and amateur contests, matches, and exhibitions and charitable and profit-seeking ventures on a reasonable basis. The Commission shall establish the criteria and procedures for the granting of licenses and permits under its jurisdiction and shall promulgate such criteria in accordance with the District of Columbia Administrative Procedure Act (D.C. Code sec. 1-1501 et seq.).

(b) The Commission may exempt schools, colleges, or universities and similar amateur events from any and all of its rules upon proper application by such school, college, or university or by the manager or promoter of such amateur event. (Oct. 8, 1975, D.C. Law 1-20, § 6, 22 DCR 2001.)

EFFECTIVE DATE

See note under § 2-1231.

§ 2-1236. Powers.

(a) The Commission shall have the power to make, amend, carry out, and enforce such rules as it deems necessary for and likely to be effective in governing the events and procedures within its jurisdiction as well as all participants in such events and procedures. The Commission shall conduct its rulemaking and enforcement and other functions under the provisions of the District of Columbia Administrative Procedures Act (D.C. Code, sec. 1-1501, et seq.) where appropriate, and shall promulgate rules within 60 days of its establishment.

(b) (1) The Commission shall have the power to issue permits and licenses to all participants, and for all events covered by this subchapter. If the Commission, by rule, regulation, or order requires a license for a person or event covered by this subchapter, no person shall hold, conduct, or be a participant in any such boxing, wrestling, or martial arts contest, match, or exhibition without a permit or license from the Commission. The Commission is authorized, in its sole judgment and discretion to assign to those with proper permits, dates on which boxing, wrestling, and martial arts contests, matches, and exhibitions may be held, and no person shall hold any boxing, wrestling or martial arts contest, match or exhibition on any dates unless specifically authorized to do so by the Commission. No permit as described in this section shall be issued to any person unless such person agrees to accord to the Commission the right to examine the books of account and other records of such person relative to the boxing, wrestling, or martial arts contest, match or exhibition for which such permit is issued, and such permit shall so state on its face. Licenses and permits may

be revoked or suspended by the Commission for violation of any rule, regulation, or order of the Commission or for violation of any rule, regulation, or order of the District of Columbia or for other cause. The contested case provisions of the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1509, 1-1510) shall be followed in revocation and suspension proceedings.

(2) [This paragraph contained an amendment of section 47-2344a(d)(3), and is reflected therein.]

(c) The Commission shall have the power to collect fees for permits and licensure in an amount and in a manner that is reasonable in light of costs of administration and like charges imposed by other jurisdictions for similar licenses and that it shall determine with the approval of the Mayor.

(d) The Commission shall have the power to require all licensees and permittees to execute and file with the Commission a bond in an amount to be determined by the Commission before such license or permit may be granted. Said bond shall be approved as to form and sufficiency of sureties by the Mayor, or by such official as he may designate. In case of default in such performance, recovery may be had on such bond in the same manner as other penalties are recovered by law.

(e) The Commission shall have the power to establish standards for, and the permitted circumstances of, rental or ownership of the premises where events within the jurisdiction of the Commission will or may occur. The Commission may also establish standards for all equipment of the Commission. The Commission may also provide for the inspection of such premises and equipment.

(f) The Commission shall have the power to assess nonlicense fees and fines payable to the Commission under this subchapter or the Commission rules, and to require reports and manifests to be furnished the Commission relating to nonlicense fees.

(g) The Commission shall have the power to employ clerical and administrative personnel as it deems necessary and at rates of compensation that this Commission shall fix provided that such rate shall not exceed \$20,000 per person per annum. The Commission may also employ inspectors, examining physicians, and other personnel, whose compensation shall be fixed by the Commission as may be necessary to administer the subchapter, *Provided That* part-time professional personnel shall not receive more than \$150 for one day or evening of work.

(h) Each member of the Commission shall have the power to administer oaths and affirmations and examine witnesses concerning any matters within the jurisdiction of the Commission. The Commission shall be vested with the same powers to issue subpoenas as to matters within its jurisdiction as are vested in trial boards of the Metropolitan Police and Fire Departments. False swearing on the part of any witness before the Commission shall be punishable in the same manner as false swearing before said trial boards, and obedience to any subpoena issued by the Commission may be compelled in the same manner as obedience is compelled to subpoenas issued by said trial boards set forth in chapter 6 of title 4.

(i) The Commission shall have the power to investigate all operations, occurrences, events and persons within its jurisdiction, and any suspected violation of its orders or rules, or of this subchapter.

(j) The Commission shall have the power to issue such orders (including suspensions of licenses and permits), to persons within its jurisdiction, which reasonably will (i) assure compliance with this subchapter, or the Commission's rules or orders, (ii) prevent influence of organized crime in boxing, wrestling and the martial arts in the District of Columbia, or (iii) encourage boxing, wrestling and the martial arts in the District.

(k) The Commission shall have the power subject to the approval of the Mayor, to make or engage in contracts, agreements, or cooperative work, with other District of Columbia agencies, or commissions or agencies of other states or cities governing boxing, wrestling, or the martial arts, or private persons, when such contracts, agreements, or cooperative work will reasonably and lawfully carry out the purposes of this subchapter.

(l) The Commission shall have the power to establish other rules and regulations concerning events and persons within its jurisdiction as it deems appropriate to encourage boxing, wrestling, and the martial arts in the District of Columbia and for other purposes consistent with this subchapter. (Oct. 8, 1975, D.C. Law 1-20, § 7, 22 DCR 2002.)

EFFECTIVE DATE

See note under § 2-1231.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2-1238.

§ 2-1237. Administration.

(a) All receipts and disbursements of the Commission shall be made to and from a separate trust fund maintained for the Commission.

(b) Every person holding or conducting an event within the jurisdiction of the Commission shall file with the Commission within 24 hours after the event is over, a report concerning fees, prices, revenues, and gross receipts from the event at the time and in the form prescribed by the Commission; however, this shall not preclude the Commission from demanding manifests or reports at an earlier time. Such person shall pay to the Commission at the time of the filing of the report, a fee of 5 per centum of the gross receipts realized by such person as a result of holding or conducting the event except that the Commission may require the amount so collected be not less than that necessary for the payment of compensation to the personnel necessary to conduct such contest, match or exhibition. Each ticket of admission to any covered event shall bear clearly upon its face its price.

(c) Every person presenting or showing any boxing or wrestling, or martial arts match, contest, or exhibition on closed circuit telecast or subscription television viewed within the District, whether or not originating in the District, shall file with the Commission within 24 hours after such telecast or showing is over, a report stating the exact number of tickets sold for such showing and the gross receipts therefrom, or if no tickets are sold, stating the price in money or value paid or owed for such telecast or

subscription, and further stating any other information the Commission may require. Such person or club shall within twenty-four hours after such showing pay to the Commission a fee of 10% of the gross receipts realized from, or price paid or owed for, the showing; however, this provision shall not preclude the Commission from seeking an advance payment for such presentation or showing where it deems such payment to be appropriate.

(d) The Commission may also charge such other nonlicense fees as are reasonable in amount for services it renders in carrying out its lawful functions.

(e) The Commission shall report annually to the Mayor and to the Council its official acts during the preceding year and the financial condition of the trust fund. It shall also make such recommendations as it deems appropriate.

(f) The District of Columbia Auditor shall conduct an annual audit of the Commission.

(g) The Mayor shall conduct quarterly audits of the Commission and furnish the Commission with such office space as it needs and with administrative aid as the Commission may request.

(h) All amounts in the trust fund established in subsection (a) above at the end of each fiscal year in excess of \$50,000, shall be paid to the General Fund of the District of Columbia. (Oct. 8, 1975, D.C. Law 1-20, § 8, 22 DCR 2008.)

EFFECTIVE DATE

See note under § 2-1231.

CROSS REFERENCE

District of Columbia Auditor, generally, see § 47-120.
General fund of District, see § 47-130b.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2-1238.

§ 2-1238. Violations of Commission rules—Penalties.

(a) Any person who holds any boxing, wrestling or martial arts contest, match or exhibition in the District of Columbia, or engages or participates in a boxing, wrestling or martial arts contest, match, or exhibition without a valid license or permit effective at the time as provided in section 2-1236(b), shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than one year, or both. Such cases shall be prosecuted by the Corporation Counsel of the District of Columbia in the Superior Court of the District of Columbia.

(b) In the case of a person who is found by a preponderance of the evidence, under the contested case procedure in the District of Columbia Administrative Procedures¹ Act [D.C. Code, sec. 1-1501 et seq.], in a hearing before the Commission, to have violated lawful orders or rules of the Commission other than those penalized by subsection (a) of this section, the Commission may, upon findings explaining its actions—

(1) Revoke the licenses previously obtained by such person under the Commission Rules;

(2) Consider the violation as grounds for future license denials against such person;

(3) Levy a fine in the amount of \$1,000 or less;

(4) Refer the case to Corporation Counsel for further prosecution; or

¹ So in original.

(5) Make such other orders as are reasonable and just, restricting or directing the violator's actions in regard to boxing, wrestling or the martial arts in the District of Columbia.

(c) For failure to file the reports or pay the fees required in sections 2-1237 (b) and (c), a fine amounting to 10% of the fees due under those sections, up to a maximum of 30% thereof, shall be assessed for each month or part thereof in which such required reports are not filed, or fees paid. (Oct. 8, 1975, D.C. Law 1-20, § 9, 22 DCR 2010.)

EFFECTIVE DATE

See note under § 2-1231.

CROSS REFERENCE

Power of Commission to assess nonlicense fees and fines, see § 2-1233.

§ 2-1239. Liability of Commission members.

(a) A member of the Commission shall not knowingly participate in any action of the Commission if such member, or the member's spouse, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, cousin, nephew or niece, has a financial or business interest in the action.

(b) A member shall not be liable in damages or court costs for any action of the Commission performed in good faith. (Oct. 8, 1975, D.C. Law 1-20, § 10, 22 DCR 2012.)

EFFECTIVE DATE

See note under § 2-1231.

Chapter 13.—COSMETOLOGISTS

§ 2-1302. Board of Cosmetology—Qualifications—Tenure—Removal—Officers—Compensation—Bond—Meetings—Quorum—Records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1303. Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1304. Powers and duties of the board—Suspension, revocation of license—Procedure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1305. Appeal from action of the board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1318. Examinations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1321. Sanitary rules.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 14.—PLUMBERS

§ 2-1401. Plumbing board—Appointment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1402. Licenses—Examination of applicants—Issuance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1404. Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1405. License—Renewal, fee, revocation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—STEAM AND OTHER OPERATING ENGINEERS

§ 2-1501. Steam and other operating engineers—License required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1502. Board of examiners—Constitution—Examination of applicants—Compensation of Board members—Inspection of engines and boilers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 17.—ARMORY BOARD

SUBCHAPTER I.—GENERAL PROVISIONS

§ 2-1702. Membership of board—Term—Appointment of alternates—Delegation of authority—Compensation—Election of chairman.

There is established an Armory Board, to be composed of the commanding general of the District of Columbia Militia, and two other members appointed by the Mayor of the District of Columbia by and with the advice and consent of the Council of the District of Columbia. The members appointed by the Mayor shall each serve for a term of four years beginning on the date such member qualifies. Each member of the Armory Board is authorized to appoint, and in his discretion to withdraw the appointment of, an alternate and to delegate to such alternate authority to act in his place and stead in respect of the powers granted by this subchapter. The members of said Board and the alternates shall serve without additional compensation. Said Armory Board shall elect a chairman from among its members. (June 4, 1948, 62 Stat. 339, ch. 418, § 2; Dec. 24, 1973, Pub. L. 93-198, title IV, § 494, 87 Stat. 811.)

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the section by striking out the first sentence and inserting in lieu two new sentences to read as above set out. Prior to amendment, the first sentence read: "There is hereby established an Armory Board, to be composed of the Commissioner of the District of Columbia, the Commanding General of the District of Columbia Militia, and a third person not employed by the Federal or District Governments who shall be appointed by the Chairmen of the District of Columbia Committees of the United States Senate and the United States House of Representatives for a term of three years."

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this amendment is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in the amendment to this section made by Act Dec. 24, 1973, Pub. L. 93-198.

TRANSFER OF FUNCTIONS

Section 712 of Act Dec. 24, 1973, Pub. L. 93-198 [set out as § 1-132], provided in part that "[no] function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the . . . Armory Board, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act [§ 1-144(a)]. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in

whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting."

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 607 of title 40, U.S. Code.

§ 2-1703. Control and jurisdiction over District of Columbia National Guard Armory—Maintenance and repair.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1705. Use of armory by the militia of the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1706. Secondary purposes—Authorization.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1708. Provision for working capital as revolving fund—Transfer of rental revenues to revolving fund — Expenditures — Revenues — Deficiency appropriations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1710. Yearly financial statement and report of activities—Recommendations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—DISTRICT OF COLUMBIA STADIUM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 47-228.

SUBCHAPTER REFERRED TO IN U.S. CODE

This subchapter is referred to in section 607 of title 40, U.S. Code.

§ 2-1720. Purpose—Authorization of Armory Board to construct Stadium—Plans.

CROSS REFERENCE

Seating capacity authorized to be increased by not to exceed 8,000, see 40 U.S.C. 607.

§ 2-1723. Authority of Board outlined.**CROSS REFERENCE**

Authority of Board respecting additional seating capacity of stadium, see 40 U.S.C. 607.

§ 2-1724. Deposit of receipts into operating fund—Use of funds—Record of cost and maintenance to be kept—Board may advance moneys for operation and maintenance—Reimbursement—Surplus moneys to be placed in sinking fund—Statement to be filed with Congress.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Disposition of revenue derived from additional seating capacity of stadium, see 40 U.S.C. 607.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 607 of title 40, U.S. Code.

§ 2-1727. Limitation on indebtedness—Limitation on liability of Board members—Deficits to be included in budget estimates—Authority to borrow from Secretary of Treasury—Repayment—Bonds guaranteed by the United States.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1728. Filing of annual reports with Congress.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 18.—PROFESSIONAL ENGINEERS**§ 2-1802. Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1805. Board of registration—Appointment of members — Qualifications — Terms — Removal of members.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1806. Compensation of members of Board.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1808. General powers of Board.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1813. Fees—Payment of expenses—Audit.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-1816. Annual report.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 19.—COUNCIL ON LAW ENFORCEMENT**§ 2-1901. Council on Law Enforcement in the District of Columbia.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 20.—PAWNBROKERS**§ 2-2001. Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2002. Licenses required of pawnbrokers.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2003. Appointment of attorney and application for licenses.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2004. Bond provisions—Annual renewal.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2005. Issuance of license.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2006. Revocation, suspension, and renewal of licenses.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2007. Enforcement provisions—Commissioner to investigate licensees—Production of records—Contempt proceedings—Filing of reports—Preservation of records—Review of Commissioner's decisions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2008. Advertising—Statement of rates.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2009. Investigations of economic conditions relating to pawnbrokerage business—Fixing of interest rates—Payment of loan.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2011. Pawnbroker to keep accurate records of loan transactions—Books open to inspection by Commissioner—Police to be admitted by pawnbroker during business hours—Divulging contents of records—Daily transcripts of loan transactions to be filed with Chief of Police.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2017. Rules and regulations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 21.—CHARITABLE SOLICITATIONS**§ 2-2101. Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2102. Powers of Commissioner and Council.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2103. Certificate of registration—Nonapplicability to educational or religious groups—Other exemptions by regulations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2104. Application for and issuance of certificate.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2106. Registrant required to make report of contributions—Time.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2107. Representations as to truth or finding by Commissioner in regard to registration certificate or solicitor card prohibited.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2109. Commissioner may appoint advisory committee—Composition of committee—Secretary.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2110. Promulgation of regulations—Hearing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 22.—PUBLIC DEFENDER SERVICE

§ 2-2222. Functions and authority of Service—Persons who may be represented—Use of private attorneys—Determination of financial capability of applicant—False information—Penalty.

CROSS REFERENCES

Representation of indigents, generally, see § 11-2601 et seq.

Right to counsel of child alleged to be delinquent or in need of supervision, see § 16-2304.

NOTES TO DECISIONS

Change of venue

With respect to motion for change of venue which was first granted and was then withdrawn by defendant, no error was shown by contention that transfer was made contingent on relinquishment of right to effective counsel, where counsel who was preparing insanity defense was from the legal aid agency and by statute could not follow the case outside the district, and where issue of replacement counsel in transferee district was never raised since defendant insisted on retaining original counsel and accordingly chose to have case remain in District of Columbia, where his chief counsel assured trial court that defendant could get a fair trial. *United States v. B. A. Bryant* (1972, 471 F. 2d 1040, 153 U.S. App. D.C. 72; cert. denied 93 S. Ct. 923, 409 U.S. 1112).

Effective assistance of counsel

If in a collateral attack based on allegations of ineffectiveness of appointed counsel the trial court concludes that a hearing should be held a non-Public Defender Service attorney should be appointed if the original trial was with that agency. *W. J. Angarano v. United States* (D.C. App. 1974, 329 A. 2d 453).

Withdrawal of counsel

If a real conflict of interest exists as to whether alleged ineffectiveness of a Public Defender Service trial attorney may have reached constitutional proportions the PDS may be permitted to withdraw as appellate counsel; however, the PDS is not entitled to carte blanche authority to withdraw from the appellate handling of a case which was tried by another of its attorneys simply by stating that "ethical considerations" are present; a prima facie case of constitutional ineffectiveness must exist before leave to withdraw is granted. *W. J. Angarano v. United States* (D.C. App. 1974, 329 A. 2d 453).

An adequate specific showing that prima facie ineffectiveness exists is required before the District of Columbia Court of Appeals will grant the Public Defender Service leave to withdraw and appoint new counsel to determine whether to assert such an issue in the reviewing court or to seek collateral relief in the trial court. *Id.*

§ 2-2223. Board of Trustees—Appointment—Members—Powers—Term of office—Vacancies—Legal Aid Society Trustees to continue in office—Trustees deemed employees of District for purpose of suit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2226. Reports by Board of Trustees—Annual audits by certified public accountants.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2227. Appropriations—Grants and contributions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 23.—BONDING OF HOME IMPROVEMENT BUSINESS

§ 2-2301. Bonding of persons engaged in home improvement business—Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2302. Council may establish classes and subclasses of persons licensed in the home improvement business—Bonds for the protection of the public—Licensees may be required to carry public liability and property damage insurance—Designation of Commissioner by licensees as their attorney for service of process—Terms and conditions of bonds—Aggrieved person may sue on the bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Construction

This chapter is remedial legislation designed for protection of homeowner, and should be broadly construed to effectuate its purpose but cannot be construed to impose liability beyond proofs made at trial. *Bathroom Design Institute et al. v. E. Parker et ano.* (D.C. App. 1974, 317 A.2d 526).

Contracts

Contract between homeowners and contractor which was unlicensed in District of Columbia, for waterproofing

basement in the District, was void and unenforceable. *Bathroom Design Institute et al. v. E. Parker et ano.* (D.C. App. 1974, 317 A.2d 526).

Liability of surety

Where contractor unlicensed in District of Columbia received money from homeowners to waterproof basement and failed to perform, contractor was liable for amount received, and surety on performance bond was likewise liable for same amount. *Bathroom Design Institute et al. v. E. Parker et ano.* (D.C. App. 1974, 317 A.2d 526).

Under this section limiting amount of damages recoverable, under this chapter, to damage sustained by reason of an act, transaction or conduct of home improvement contractor in violation of law or regulation in force in the District relating to licensed activity, surety upon performance bond of defendant contractor was not liable for interest paid by householders as result of loan which they themselves obtained from lender. *Id.*

Measure of damages

Work performed by contractor in District of Columbia though contractor was unlicensed in the District was performed in contravention of regulations designed for regulatory purposes in exercise of police power, and there was no equitable basis upon which quasi-contractual recovery could be predicated. *Bathroom Design Institute et al. v. E. Parker et ano.* (D.C. App. 1974, 317 A.2d 526).

§ 2-2304. Penalty for violation of chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2305. Prosecutions to be conducted by Corporation Counsel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 2-2306. Supplemental authority of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 24.—SECURITY AGENTS AND BROKERS

§ 2-2416. Advisory committee.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 3.—BOARD OF PUBLIC WELFARE

Chapter 1.—BOARD OF PUBLIC WELFARE

Sec.

3-114. Powers of Mayor over dependent children.

3-115. Contracts for care of dependent children—Adoption subsidy payments.

3-117. Mayor to care for dependent and neglected children—Children to be placed in private families—Adoption.

§ 3-102. Board of Public Welfare—Creation—Successor to boards abolished—Employees transferred.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-103. Composition of board—Term of office—Eligibility of members—Removal—Service without compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-105. Director of Public Welfare—Appointment and duties—Qualifications—Other employees—Compensation.

The Mayor of the District of Columbia, upon the nomination of the Board, is hereby authorized to appoint a Director of Public Welfare, which position is hereby authorized and created, who shall be the chief executive officer of the Board and shall be charged, subject to its general supervision, with the executive and administrative duties provided for in this Act. The Director shall be a person of such training, experience, and capacity as will especially qualify him or her to discharge the duties of the office. The Director of Public Welfare may be discharged by the Mayor of the District of Columbia upon recommendation of the Board. The Mayor of the District of Columbia is authorized, upon the nomination of the Board, to appoint such personnel as may be necessary for the efficient performance of the duties of the Board: *Provided, however*, That all employees of the Board, except the Director, shall be appointed in accordance with and be subject to the provisions of sections 1101-1103, 1105, 1301-1303, 1307, 1308, 2102, 3302-3306, 3318, 3319, 3321, 3361, 7152, 7321, 7322, and 7352 of title 5, U.S. Code [relating to the classified civil service], and the rules and regulations made in pursuance thereof in the same manner as members in the classified civil service of the United States, the Mayor of the District of Columbia, however, being authorized in his discretion to give preference to residents of the District of Columbia. The Civil Service Commission is hereby

authorized and directed to confer a competitive civil-service status upon those employees performing services for the Board on the effective date of this section who are citizens of the United States and who, within six months after the effective date of this section, are certified by the Mayor, upon recommendation of the Board, (a) as having been appointed from among the highest available eligibles from an appropriate register of the Civil Service Commission or (b) as having rendered active service for the Board prior to the effective date of this section, and who qualify in such appropriate noncompetitive examinations as the Civil Service Commission may prescribe, except that as to employees engaged in work in which the Federal Government shares the expense, the Board of Public Welfare shall prescribe such conditions for eligibility to enter appropriate noncompetitive examinations prescribed by the Civil Service Commission as shall conform to the Federal Acts providing for Federal financial participation and to rules and regulations of the Federal agencies administering such Acts. Any employee of the Board who fails to meet these requirements or who fails to take or pass the noncompetitive examination prescribed by the Commission, or who is not certified by the Mayor, may continue to serve for a period of not more than thirty days after the establishment of appropriate registers. (Mar. 16, 1926, 44 Stat. 209, ch. 58, § 5; Dec. 20, 1941, 55 Stat. 849, ch. 605, § 1.)

CODIFICATION

Section is set out in this supplement to correct an error in the translation of the Act of Jan. 16, 1883, appearing in this section in the main edition.

The reference in this section to "sections 1101-1103, 1105, 1301-1303, 1307, 1308, 2102, 2951, 3302-3306, 3318, 3319, 3321, 3361, 7152, 7321, 7322, and 7352 of title 5, U.S. Code [relating to the classified civil service]" was substituted for "an Act entitled 'An Act to regulate and improve the civil service of the United States', approved January 16, 1883, as amended (5 U.S.C. 638 et seq.)" for the same reason stated in the codification note under § 4-103 in the main edition.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-107. Supervision of personnel of institutions—Appointment and discharge of personnel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-108. Regulation of admissions to, and administration of institutions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-112. Plans for new institutions to be submitted to board—Investigation of institutions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-114. Powers of Mayor over dependent children.

The Mayor of the District of Columbia (hereinafter referred to as the "Mayor") may—

(1) make temporary provision for the care of children pending investigation of their status;

(2) have the care and legal guardianship, including the power to consent to or arrange for adoption in appropriate cases, of—

(A) children who may be committed to the Mayor as wards of the District of Columbia by courts of competent jurisdiction; and

(B) children who are relinquished by their parents to the Mayor or whose relinquishment is transferred to the Mayor by a licensed child-placing agency under section 32-786; and

(3) make such provisions for the care and maintenance of such children in private homes, under contract, including adoption subsidy pursuant to section 3-115, or in public or private institutions, as the welfare of such children may require; and

(4) provide care and maintenance for substantially retarded children who may be received upon application or upon court commitment, in institutions or homes or other facilities equipped to receive them, within or without the District of Columbia.

The Mayor shall cause the wards of the District of Columbia placed out under temporary care to be visited as often as may be required to safeguard their welfare. (Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; Jan. 2, 1974, Pub. L. 93-241, § 1(a)(1), 87 Stat. 1057.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Jan. 2, 1974, Pub. L. 93-241, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3 of Act Jan. 2, 1974, Pub. L. 93-241, 87 Stat. 1061, provided: "The amendments made by this Act [amending §§ 3-114, 3-115, 3-117, 16-307, 16-309] shall take effect at the end of the ninety-day period beginning on the date of enactment of this Act."

§ 3-115. Contracts for care of dependent children—Adoption—subsidy payments.

(a) Except as provided in subsection (f), the Mayor may conclude arrangements with persons or institutions at such rates as may be agreed upon.

(b) (1) The Mayor may make adoption subsidy payments to an adoptive family (irrespective of the State of residence of the family), as needed, on behalf of a child with special needs, where such child would in all likelihood go without adoption except for the acceptance of the child as a member of the adoptive family, and where the adoptive family has the capability of providing the permanent family relationships needed by such child in all areas except financial, as determined by the Mayor. Subsidy payments may be made under this section only pursuant to a subsidy payment agreement entered into by the Mayor and the adoptive parents concerned prior to completion of the adoptive process, but subsidy payments may be made before such adoption becomes final.

(2) For the purposes of this subsection—

(A) The term "child with special needs" includes any child who is difficult to place in adoption because of age, race, or ethnic background, physical or mental condition, or membership in a sibling group which should be placed together. A child for whom an adoptive placement has not been made within six months after he is legally available for adoptive placement shall be considered a child with special needs within the meaning of this section.

(B) The term "adoptive family" includes single persons.

(c) Any public agency or licensed child-placing agency, having a child with special needs in foster care or institutional care, or any foster parent having such a child in his home may recommend to the Mayor a subsidy for the adoption of such child, and may include in the recommendation advice as to the appropriate level of payments and any other information likely to assist the Mayor in carrying out the provisions of this section. The Mayor shall make the determination as to whether or not an appropriate adoptive home exists for the child, but in so doing the Mayor shall refer to the recommendations of the referring agency. If the Mayor concludes that the child referred is a child with special needs within the meaning of this section, and that an appropriate adoptive home exists for the child, the Mayor is authorized to enter into a tentative adoption subsidy agreement with the prospective adoptive family, and upon entering into such an agreement, the Mayor may accept a transfer of relinquishment of parental rights from the referring agency pursuant to section 32-786.

(d) If a child in the custody of the Mayor or a licensed child-placing agency has been in foster care or institutional care for at least six months after the child is considered legally available for adoptive placement, the Mayor or agency shall inform the family or institution providing care of the possibility of financial aid for adoption under this section. If the family caring for the prospective adoptee applies to the Mayor for adoption of the child, and if it appears to the Mayor after study that

the family would be an appropriate adoptive family for the child but for the family's economic inability to meet the child's needs, the Mayor shall enter into a tentative agreement with the family concerning the amount and duration of a proposed subsidy in the event the child is placed for adoption with that family. Thereafter the Mayor may accept a transfer of relinquishment of parental rights from the referring agency in appropriate cases. The Mayor shall in all cases take all steps necessary to assist the family in completing the legal and procedural requirements necessary to effectuate the adoption, including payment for legal fees and court costs.

(e) The amount and duration of adoption subsidy payments may vary according to the special needs of the child, and may include maintenance costs, medical, dental, and surgical expenses, psychiatric and psychological expenses, and other costs necessary for his care and well-being. A subsidy may be paid on a long-term basis to help a family whose income is limited and is likely to remain so; on a time-limited basis to help a family meet the cost of integrating a child into the family over a specified period of time; or on a special services basis to help a family meet a specific anticipated expense or expenses when no other resource appears to be available. Eligibility for payments shall continue until the child reaches eighteen years of age.

(f) The Mayor is authorized to make payments under this section from appropriations for the care of children in foster homes and institutions, and to seek and accept funds from other sources including Federal, private, and other public funding sources, to carry out the purposes of this section. The amount expended by the Mayor for any subsidy may not exceed the highest amount the Mayor would be authorized to spend in providing or securing support and special services for the child if the child were in the legal custody of the Mayor. There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(g) No adoption subsidy payment shall be made on behalf of any child with respect to whom an adoption decree has been entered by the Superior Court of the District of Columbia, pursuant to chapter 3 of title 16, prior to April 2, 1974.

(h) Once during each calendar year the Mayor shall review the need for continuing each family's subsidy. At the time of such review and at other times during the year when changed conditions, including variations in medical opinions, prognosis, and costs are deemed by the Mayor to warrant such action, appropriate adjustments in payments shall be made based upon changes in the needs of the child. Any parent who is a party to a subsidy agreement may at any time in writing request, for reasons set forth in the request, a review of the amount of any payment or the level of continuing payments. Such review shall be begun not later than thirty days from the receipt of the request. Any adjustment may be made retroactive to the date the request was received by the Mayor. If the request is not acted on within thirty days after it has been received by the Mayor, or if the Mayor modifies or terminates an agreement without the concurrence of all parties, any party to the agreement shall be entitled to a

hearing under the applicable provisions of the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501—1-1510).

(i) The Mayor shall keep such records as are necessary to evaluate the effectiveness of adoption subsidy as a means of encouraging and promoting the adoption of children with special needs. The Mayor shall make an annual progress report which shall be open to public inspection. The report shall include, but not be limited to—

(1) the number of children placed in adoptive homes under subsidy agreements during the year preceding the annual report and the major characteristics of the children placed; and

(2) the number of children currently in foster care with the Mayor for six months or more, and the legal status of those children.

The Mayor shall disseminate information to prospective adoptive families as to the availability of adoptable children and of the existence of aid to families who qualify for a subsidy under this section.

(j) All rules and regulations adopted by the Mayor pursuant to sections 3-115 to 3-118 shall be published in the District of Columbia Register as required by section 6 of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1505). (July 26, 1892, 27 Stat. 269, ch. 250, § 3; Jan. 2, 1974, Pub. L. 93-241, § 1(a)(2), 87 Stat. 1058.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

In subsec. (g), "April 2, 1974" was substituted for "the effective date of this section" on authority of sec. 3 of Act Jan. 2, 1974, which provided the section take effect at the end of the ninety-day period beginning on the date of enactment of the Act.

AMENDMENT

1974—Act Jan. 2, 1974, Pub. L. 93-241, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 3-114.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3-114, 3-117, 16-307, 16-309.

§ 3-116. Children over whom Board shall have supervision.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-117. Mayor to care for dependent and neglected children—Children to be placed in private families—Adoption.

The Mayor may—

(1) accept for care, custody, and guardianship dependent or neglected children whose custody or parental control has been transferred to the Mayor, and to provide for the care and support of such children during their minority or during

the term of their commitment, including the initiation of adoption proceedings and the provision of subsidy in appropriate cases under section 3-115;

(2) with respect to all children accepted by him for care, place them in private families either without expense or with reimbursement for the cost of care, or in appropriate cases to place them in private families under an adoption subsidy agreement concluded under section 3-115 or to place them in institutions willing to receive them either without expense or with reimbursement for the cost of care; and

(3) consent to, arrange for or initiate court proceedings for the adoption of all children committed to the care of the Mayor whose parents have been permanently deprived of custody by court order, or whose parents have relinquished a child to the Mayor or to a licensed child-placing agency which has transferred the relinquishment to the Mayor under section 32-786.

(July 26, 1892, 27 Stat. 269, ch. 250, § 5; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; Jan. 12, 1942, 55 Stat. 883, ch. 649, § 3; Jan. 2, 1974, Pub. L. 93-241, § 1(b), 87 Stat. 1060.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Act Jan. 2, 1974, Pub. L. 93-241, amended section generally. For prior provisions, see the 1973 edition of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 3-114.

§ 3-118. Antecedents of children to be investigated—Records confidential—Physical and mental care.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3-115.

§ 3-123. Annual budgets—Report of activities—Studies of social conditions—Children to be placed with regard to religious faith of parents—Record if placed elsewhere—Religious freedom.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—PUBLIC ASSISTANCE

Sec.

3-213a. Same; Indigents and wards of the District.

3-215. Public assistance not assignable.

§ 3-201. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Needy persons

Directive in statute that public assistance "shall be awarded to or on behalf of any needy individual" simply means that assistance is to be given any needy individual eligible under one of the five categories established by the statute, not that any and every needy individual is entitled to public assistance. *H. E. Staley v. District of Columbia Department of Human Resources* (D.C. App. 1973, 310 A.2d 842).

§ 3-202. Categories and administration of public assistance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Aid to families with dependent children

District of Columbia Department of Human Resources regulation concerning determination of income for purpose of computing aid to families with dependent children and stating that all income must be actually available to the applicant or recipient for his current use cannot be interpreted as covering only income available for current use, particularly in view of other regulations stating that voluntary deductions for future benefits are not to be excluded from gross income. *T. Harris et al. v. District of Columbia Department of Human Resources* (D.C. App. 1973, 304 A.2d 868).

Reductions in income of AFDC recipients, which in one case was caused by garnishment of wages because of a default judgment against recipient who signed note as an accommodation maker and which in the other case resulted from recipient's voluntary assignment of wages to repay debt owed to credit union, were the result of recipients' voluntary acts of incurring the debts and were not mandatory deductions for purpose of determining the entitlement of recipients to AFDC benefits. *Id.*

Windfall regulations concerning computation of AFDC benefits involved extraordinary happening such as overpayments, legacies, settlement of lawsuits, etc., and not earned income, and such regulations are not applicable where applicants' voluntary actions result in reduction of regular income. *Id.*

General public assistance

District of Columbia, charged with the difficult responsibility of allocating limited welfare funds among the myriad of potential recipients, was authorized, if not compelled, to limit eligibility under public assistance statute's "General Public Assistance" category to a particular class of needy persons, namely, those unable to work because of a physical or mental disability expected to be of short duration. *H. E. Staley v. District of Columbia Department of Human Resources* (D.C. App. 1973, 310 A.2d 842).

Judicial review—Court costs

Length of delay in implementing retroactive payment order of Commissioner of Department of Human Resources justifies an assessment of costs in form of a \$25 filing fee against administrative officers in their official capacity once petition in nature of mandamus to compel agency action was dismissed as moot after officers tardily performed requested action. *B. Dillard et al. v. J. P. Yeldell et al.* (D.C. App. 1975, 334 A.2d 578).

Needy persons

Directive in statute that public assistance "shall be awarded to or on behalf of any needy individual" simply means that assistance is to be given any needy individual eligible under one of the five categories established by the statute, not that any and every needy individual is entitled to public assistance. *H. E. Staley v. District of Columbia Department of Human Resources* (D.C. App. 1973, 310 A.2d 842).

§ 3-204. Amount of public assistance.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AVAILABILITY OF APPROPRIATIONS

Section 8 of the District of Columbia Appropriation Act, 1975 (Aug. 31, 1974, Pub. L. 93-405, 88 Stat. 827) provided:

"Appropriations in this Act shall be available for the payment of public assistance without reference to the requirement of subsection (b) of section 5 of the District of Columbia Public Assistance Act of 1962 [§ 3-204(b)] and for the non-Federal share of funds necessary to qualify for Federal assistance under the Act of July 31, 1968 (Public Law 90-445)."

Similar provisions were contained in the following prior appropriation acts:

- 1974—Aug. 14, 1973, Pub. L. 93-91, § 11, 87 Stat. 310.
- 1973—July 10, 1972, Pub. L. 92-344, § 12, 86 Stat. 455.
- 1972—Dec. 18, 1971, Pub. L. 92-202, § 14, 85 Stat. 687.
- 1971—July 19, 1970, Pub. L. 91-339, § 15, 84 Stat. 437.
- 1970—Dec. 24, 1969, Pub. L. 91-155, § 17, 83 Stat. 433.

§ 3-205. Application for public assistance.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-206. Investigation of applicant—Public assistance identification card—Check distribution—Penalty.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-207. Award and payment of public assistance.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-208. Recipient incapacitated.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-209. Emergency public assistance.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-210. Redetermination of grants.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-211. Records.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-213. Funeral expenses.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-213a. Same; Indigents and wards of the District.

(a) The Mayor of the District of Columbia is hereby authorized, pursuant to regulations prescribed by the Council of the District of Columbia, to provide for the payment of reasonable funeral and burial expenses of indigent residents of the District of Columbia and of persons under the care and custody of the District of Columbia government institutions.

(b) Nothing in this section shall be construed as repealing or in any way modifying any provision of chapter 2 of title 2, sections 27-129 through 27-131, or this chapter. (Oct. 26, 1973, Pub. L. 93-140, § 3, 87 Stat. 504.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was not enacted as a part of the District of Columbia Public Assistance Act of 1962 (Oct. 15, 1962, Pub. L. 87-807) which comprises this chapter.

APPROPRIATIONS

See note under § 1-226a.

CROSS REFERENCE

Dead bodies for burial at public expense, notice, removal, see § 2-202.

§ 3-214. Hearings.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-215. Public assistance not assignable.

Public assistance awarded under this chapter shall not be transferable or assignable at law or in equity, and none of the money paid or payable to any recipient under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87-807, § 16; Dec. 15, 1971, Pub. L. 92-196, title VII, § 704, 85 Stat. 656; May 22, 1975, D.C. Law 1-5, § 1, 21 DCR 3949.)

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-5, struck out "(a)" at the beginning of the first paragraph, and repealed subsecs. (b)-(g) relating to rent allotment to lessors.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2 of Act May 22, 1975, D.C. Law 1-5, provided: "The amendments [to § 3-215] made by this act shall be effective with respect to monthly public assistance grants for and after the month following the month in which this act is enacted."

§ 3-216. Fraud in obtaining public assistance—Repayment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-217. Property—District's claim against estate of recipient.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

Section 1353 of title 42, U.S. Code, referred to in subsec. (c), was repealed effective Jan. 1, 1974 (except with respect to Puerto Rico, Guam, and the Virgin Islands) by Act Oct. 30, 1972, Pub. L. 92-603, title III, § 303(a), (b), 86 Stat. 1484.

§ 3-218. Responsible relatives.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Burden of proof

Where wife had deserted the marital abode burden is on District, in action by District of Columbia to recover from husband public assistance payments made by District for support of wife, to rebut presumption of wrongful desertion by establishing either that separation was by mutual consent, that separation was the fault of husband, or that wife was insane at time of separation. *G. D. Randolph, Jr. v. District of Columbia* (D.C. App. 1975, 333 A. 2d 380).

Construction

Congress intended that common-law equitable defenses to liability for support of one's spouse be incorporated into this section imposing obligation to pay for public assistance received by spouse. *G. D. Randolph, Jr. v. District of Columbia* (D.C. App. 1975, 333 A. 2d 380).

Evidence

In action by District of Columbia against husband seeking reimbursement of public assistance payments made by District for support of wife, evidence that husband's duty to support his wife had been eradicated by wife's adultery and unjustifiable desertion from husband prior to her commitment in mental hospital is admissible. *G. D. Randolph, Jr. v. District of Columbia* (D.C. App. 1975, 333 A. 2d 380).

Jurisdiction

Where District Court ordered wife committed to mental hospital, jurisdiction over any claim for contribution to her support remained in District Court while she was confined in hospital, but after she was released and placed in foster home, claim for contribution to her support is to be brought in Superior Court. *G. D. Randolph, Jr. v. District of Columbia* (D.C. App. 1975, 333 A. 2d 380).

§ 3-220. Delegation of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-221. Voluntary services.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 3-222. Appropriations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 4.—POLICE AND FIRE DEPARTMENTS

Chapter 1.—METROPOLITAN POLICE

Sec.

4-101a. Federal control of Metropolitan Police in emergencies.

4-188. Funds for the prevention and detection of crime.

4-189. Attendance at pistol matches.

§ 4-101. Metropolitan Police district created.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Demonstrations, assemblages, and marches relating to Federal Government, reimbursement of costs incurred by District, see § 1-827.

Metropolitan police assistance to U.S. Secret Service and Executive Protective Service, see § 1-826.

NOTES TO DECISIONS

Discrimination in services provided

In claim that District of Columbia had discriminated in provision of municipal services, since any prior inequality in police services had been remedied by political and administrative machinery in the District of Columbia, it was presently neither desirable nor proper for District Court to act in regard to police services. *M. Burner et al. v. W. E. Washington et al.* (1975, 399 F. Supp. 44).

Injunctions

In order to obtain injunctions against certain activities of police department on the basis of police department's alleged past violation of constitutional rights of persons participating in demonstrations, those who sought the relief were required to show that the police had engaged in widespread violations of constitutional rights, that the breaches of official duty had occurred over a period of time and were subject to repetition, and that the misconduct either resulted from departmental policies and procedures, or lack thereof, or was fostered by the department's failure to take corrective action. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F.Supp. 186).

Where evidence showed no clear pattern of police harassment likely to be continued and where in light of administrative directive concerning vendors' licensing statute it did not appear likely that police would continue to attempt to prevent underground newspaper vendors from selling newspapers from stacks upon sidewalk, injunctive relief was properly refused. *Washington Free Community, Inc., et al. v. J. V. Wilson, Chief of Police, et al.* (1973, 484 F.2d 1078, 157 U.S. App. D.C. 360; aff'g 334 F. Supp. 77).

Police line

Police line ordinance which was used by police officers to interfere with lawful demonstration activity and which gives police officer the unfettered discretion to issue any order he thinks reasonable and then to initiate criminal proceedings against a person disobeying the order is unconstitutionally vague and overly broad as applied to demonstration activities, i.e., those in which First Amendment rights were being exercised. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F.Supp. 186).

Even assuming that religious group had agreed to limit peaceful prayer vigil near White House to 100

persons with full cognizance of import of such agreement, breach of such agreement was not sufficient cause for the establishment of a police line for alleged purpose of protecting persons or property from dangerous propensities of "outsiders" who had joined the vigil. *L. Tatum et al. v. R. C. B. Morton et al.* (1974, 402 F. Supp. 719).

§ 4-101a. Federal control of Metropolitan Police in emergencies.

(a) Notwithstanding any other provision of law, whenever the President of the United States determines that special conditions of an emergency nature exist which require the use of the Metropolitan Police force for Federal purposes, he may direct the Mayor to provide him, and the Mayor shall provide, such services of the Metropolitan Police force as the President may deem necessary and appropriate. In no case, however, shall such services made available pursuant to any such direction under this subsection extend for a period in excess of forty-eight hours unless the President has, prior to the expiration of such period, notified the Chairman and ranking minority Members of the Committees on the District of Columbia of the Senate and the House of Representatives, in writing, as to the reason for such direction and the period of time during which the need for such services is likely to continue.

(b) Subject to the provisions of subsection (c) of this section, such services made available in accordance with subsection (a) of this section shall terminate upon the end of such emergency, the expiration of a period of thirty days following the date on which such services are first made available, or the adoption of a resolution by either the Senate or the House of Representatives providing for such termination, whichever first occurs.

(c) Notwithstanding the foregoing provisions of this section, in any case in which such services are made available in accordance with the provisions of subsection (a) of this section during any period of an adjournment of the Congress sine die, such services shall terminate upon the end of the emergency, the expiration of the thirty-day period following the date on which Congress first convenes following such adjournment, or the adoption of a resolution by either the Senate or the House of Representatives providing for such termination, whichever first occurs.

(d) Except to the extent provided for in subsection (c) of this section, no such services made available pursuant to the direction of the President pursuant to subsection (a) of this section shall extend for any period in excess of thirty days, unless the Senate and the House of Representatives approve a concurrent resolution authorizing such an extension. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 740, 87 Stat. 830.)

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCES

Demonstrations, assemblages, and marches relating to Federal Government, reimbursement of costs incurred by District, see § 1-827.

Metropolitan police assistance to U.S. Secret Service and Executive Protective Service, see § 1-826.

§ 4-102. Police districts and precincts to be established by Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-103. Appointments—Civil service rules made applicable—Classification.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Discrimination

Positive relationship between test of verbal skill administered applicants for employment as police officers to training course performance is sufficient to validate the test, wholly aside from its possible relationship to actual performance as a police officer. *W. E. Washington, etc., et al. v. A. E. Davis et al.* (1976, 96 S. Ct. 2040, 426 U.S. —; rev'g 512 F.2d 956, 168 U.S. App. D.C. 42).

The disproportionate impact on Negroes of written test of verbal skill administered to applicants for employment as police officers does not warrant the conclusion that the test, which is neutral on its face, is a purposely discriminatory device. *Id.*

The affirmative efforts of Police Department to recruit black officers, the changing racial composition of the recruit classes and of the force in general, and the relationship of written test of verbal skill to the training program negates any inference that the Department discriminated on the basis of race notwithstanding the disproportionate impact of the test on Negro applicants. *Id.*

While claim raised against Police Department, namely, that test given in connection with promotion from patrolman to sergeant operated to discriminate against blacks, was not governed by equal employment provision of Civil Rights Act until Act was amended, Court would look to Act and decisions construing it for guidance as to constitutional constraints on a public employer. *A. E. Davis et al. v. W. E. Washington et al.* (1972, 352 F. Supp. 187).

Where there was a poorer statistical showing of blacks than whites who passed multiple-choice critical-incident test of judgment and supervisory competence used in connection with promotion from patrolman to sergeant in police department, prima facie case of discrimination was established, and burden then shifted to government employer to justify test by establishing that it was job related. *Id.*

Where, within multiple-choice critical-incident test of judgment and supervisory competence given in connection with promotion from patrolman to sergeant,

judgmental questions portrayed by critical incidents chosen by most informed and expert members of police department and reviewed by another panel of police and testing experts without a doubt comprised a suitable sample of behaviors and skills extremely relevant to job of police sergeant, test was job related and constitutionally acceptable by current professional standards consistent with guidelines of Equal Employment Opportunity Commission. *Id.*

§ 4-104. Oath of office.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-105. Service during probationary period—Discharge for unsatisfactory service—Retention equivalent to permanent appointment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-106. Classification of officers and privates of police department—Duties of each.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-106a. Assistant to inspector commanding detective bureau—Rank and pay—Chief of detectives—Rank and pay.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-107. Age limits on original appointments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-108a. Allowance for use of private motor vehicles by inspectors.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-110. Detail of privates for detective work.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-112. Crossing policemen—Detail—Penalty for failure to stop cars.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-115. Special policemen—Appointment and compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-116. Police matrons—Appointments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-117. Duties of police matrons.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-119. Duties of Commissioner as head of police department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Federal control of Metropolitan Police in emergencies, see § 4-101a.

§ 4-121. Rules and regulations—Fine, suspension, or dismissal of police—Charges to be heard by trial board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Grooming standards

Police department grooming regulations promoted a substantial governmental interest (projection of an image facilitating effective functioning of the police department necessary to insure the safety and security of

citizens) which outweighed plaintiff officer's interest in maintaining his hair and beard as his religious beliefs dictated, and said regulations did not unconstitutionally infringe on plaintiff's free exercise rights under the First Amendment. *M. A. Marshall v. District of Columbia et al.* (1975, 392 F.Supp. 1012).

Judicial review

Compelling police department to hire and assign plaintiff as an undercover agent, so that he would not have to comply with department grooming regulations, would constitute an undue interference by the court in the internal administration of the department. *M. A. Marshall v. District of Columbia et al.* (1975, 392 F.Supp. 1012).

§ 4-122. Trial board—Appointment—Hearings—Findings—Appeals—Existing rules and regulations ratified.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-123. Commissioner and major and superintendent of police may administer oaths.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-124. Police surgeons—Qualifications—Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-125. Affiliation with organizations advocating strikes, prohibited—Penalties—Conspiracy to interfere with operation of police force—Right of resignation restricted.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Constitutionality

This section which prohibits District of Columbia police officers from engaging in fundamentally protected activity, that is from advocating, asserting or simply entertaining thoughts of achieving the right to strike against the District of Columbia, significantly infringed upon rights guaranteed a public employee by the First Amendment which were not counterbalanced by a compelling state interest. *Police Officers' Guild, National Union of Police Officers, AFL-CIO, et al. v. W. E. Washington, Mayor Commissioner etc., et al.* (1973, 369 F. Supp. 543).

Courts

Claim of plaintiff union and others that this section preventing policemen of the District of Columbia from affiliating with organizations which advocate strikes violated rights of free speech and association clearly "arises under the Constitution" within meaning of jurisdictional statute. *Police Officers' Guild, National Union of Police*

Officers, AFL-CIO, et al. v. W. E. Washington, Mayor Commissioner etc., et al. (1973, 369 F. Supp. 543).

Three-judge court statute was properly invoked where complaints of plaintiffs formally alleged the basis for and specifically requested preliminary and permanent injunctive relief against enforcement of this section prohibiting members of police department of the District of Columbia from affiliating with organizations which advocate strikes, where a substantial constitutional question was raised, and where this section was an "Act of Congress" within meaning of three-judge court statute. *Id.*

Injunctions

District of Columbia would not be enjoined from enforcing unconstitutional statute prohibiting District of Columbia police officers from associating with groups which advocate strikes, where there was no indication that decision of three-judge district court would be ignored by the District of Columbia or by any other of the defendants, so that entry of a declaratory judgment would be a fully sufficient remedy. *Police Officers' Guild, National Union of Police Officers, AFL-CIO, et al. v. W. E. Washington, Mayor Commissioner etc., et al.* (1973, 369 F. Supp. 543).

§ 4-126. Police to respect and obey major and superintendent.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-127. Major and superintendent to make quarterly reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-129. Rewards, presents, fee, or emoluments to police officers—Notice to Commissioner—Penalty for failure to give notice

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Apprehension of prison fugitives and of conditional release and parole violators, payment of rewards prohibited, see § 24-426.

§ 4-130. Clothing to be uniform.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Grooming standards

Police department grooming regulations promoted a substantial governmental interest (projection of an image facilitating effective functioning of the police department necessary to insure the safety and security of citizens) which outweighed plaintiff officer's interest in maintaining his hair and beard as his religious beliefs

dictated, and said regulations did not unconstitutionally infringe on plaintiff's free exercise rights under the First Amendment. *M. A. Marshall v. District of Columbia et al.* (1975, 392 F.Supp. 1012).

Judicial review

Compelling police department to hire and assign plaintiff as an undercover agent, so that he would not have to comply with department grooming regulations, would constitute an undue interference by the court in the internal administration of the department. *M. A. Marshall v. District of Columbia et al.* (1975, 392 F.Supp. 1012).

§ 4-131. Appropriations for clothing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-132a. Residence requirements of members of Police Force and Fire Department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-133. Appointment of special police without pay.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-134. Records—General complaint files—Lost, missing, or stolen property—Personnel records of police.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Arrest records—Amplification

In cases where an arrest is mistaken and lack of culpability has affirmatively been shown, appropriate remedy is not to destroy or seal record, but to clarify such record by a notation reflecting fact that no grounds of culpability existed, and in respect to records already disseminated, such records need not be returned, provided that suitable exculpatory explanations are sent to all persons or agencies in possession of them. *District of Columbia v. J. Sophia* (D.C. App. 1973, 306 A. 2d 652).

—Expungement

Class-wide injunctive relief ordering police department to expunge records of persons who had been arrested during mass demonstrations without probable cause is inappropriate; persons arrested should present request for expungement of their records to the police department, which should not continue to assert that it is barred by statute from expunging arrest records and that amplification is the sole remedy. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F.Supp. 186).

On failure of showing of probable cause for arrests, in action to declare certain acts with respect to arrests and prosecutions unconstitutional and to enjoin further pros-

ections in connection with disorderly conduct type offenses related to antiwar demonstrations in District of Columbia during week of May 3, 1971, defendant officials were ordered to convey to counsel for plaintiffs for destruction all specified records that would in any way relate, inform or reflect that any member of class had been arrested or charged with an offense from and including May 3 through May 6, 1971, and it was ordered that seizures of members of class from and including May 3, 1971, through May 6, 1971, would be deemed to have been "detention" rather than "arrests." *N. Sullivan et al. v. C. F. Murphy et al.* (1974, 380 F. Supp. 867).

Arrestees' action against District of Columbia police officials to compel expungement of records of arrest during civil disorders was ripe for determination where all prosecutions arising from the disorders had terminated, any danger of embarrassment or interference from judgments possibly inconsistent with those of the District of Columbia courts was obviated and a clear-cut federal controversy existed. *N. Sullivan et al. v. C. F. Murphy, Corporation Counsel, et al.* (1973, 478 F. 2d 938, 156 U.S. App. D.C. 28; cert. denied 94 S. Ct. 162, 414 U.S. 880).

Where arrests made during May, 1971, civil disorders were presumptively invalid because usual arrest procedures were not followed, arrest records, consisting in part of photographs and fingerprints taken of arrestees while they were being held in detention, would be ordered expunged. *Id.*

Police records

Where evidence in action for injunction prohibiting arbitrary use by police of computer system containing records of outstanding warrants and traffic tickets, for declaratory judgment that police regulations permitting use of system were unconstitutional and for compensatory and punitive damages arising out of alleged misuse of computer system revealed that check through computer revealed that plaintiffs had outstanding warrants against them, that plaintiffs without protest paid amounts assessed for outstanding warrants and that plaintiffs who were arrested because of warrants did not suffer any physical injury or lengthy deprivation, allegations of misconduct on part of police were not so serious as to warrant claim for more than \$10,000; thus, federal court did not have jurisdiction. *R. A. Boraks et al. v. J. V. Wilson et al.* (1974, 383 F. Supp. 195).

Preservation of records

Metropolitan police department and not Superior Court must be charged with safekeeping of records with respect to which a clarification has been made by a notation reflecting fact that arrest was mistaken and that no grounds of culpability existed. *District of Columbia v. J. Sophia* (D.C. App. 1973, 306 A. 2d 652).

§ 4-134a. Central criminal records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Arrest records—Amplification

In cases where an arrest is mistaken and lack of culpability has affirmatively been shown, appropriate remedy is not to destroy or seal record, but to clarify such record by a notation reflecting fact that no grounds of culpability existed, and in respect to records already disseminated, such records need not be returned, provided that suitable exculpatory explanations are sent to all persons or agencies in possession of them. *District of Columbia v. J. Sophia* (D.C. App. 1973, 306 A. 2d 652).

— Distribution

Substantial bundle of constitutional rights, including those of due process, privacy and presumption of innocence, may be unnecessarily infringed by police authorities' practice of routinely distributing preconviction or postexoneration arrest records, including not only fingerprints but also data identifying person ar-

rested and information concerning details and surrounding circumstances of arrest, to Federal Bureau of Investigation for nationwide redistribution for both law enforcement and employment and licensing purposes. *J. E. Utz et al. v. M. Cullinane* (1975, 520 F.2d 467, 172 U.S. App. D.C. 67).

"Duncan Ordinance" prohibited practice of metropolitan police department of routinely disseminating to Federal Bureau of Investigation, whether before conviction or after exoneration or both, arrest records which included not only arrestees' fingerprints but also data identifying persons arrested and information concerning details and surrounding circumstances of arrests, at least as long as FBI continued to redisseminate that data for other than law enforcement purposes and particularly for purposes of employment and licensing. *Id.*

Police report as notice

Police report, which set forth the circumstances surrounding plaintiff's arrest for unlawful entry and carrying a dangerous weapon, was not notice of an injury to person or damage to property for purposes of Code provision [§ 12-309] prohibiting maintenance of an action against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage, claimant has given written notice to the District of Columbia Commissioner of the approximate time, place, cause, and circumstances of the injury or damage. *H. E. Brown v. District of Columbia* (D.C. App. 1973, 304 A. 2d 292).

Preservation of records

Metropolitan police department and not Superior Court must be charged with safekeeping of records with respect to which a clarification has been made by a notation reflecting fact that arrest was mistaken and that no ground of culpability existed. *District of Columbia v. J. Sophia* (D.C. App. 1973, 306 A. 2d 652).

§ 4-134b. Reports by independent police.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-136. Police to have power of constables.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-137. Preservation and destruction of records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Arrest records—Expungement

On failure of showing of probable cause for arrests, in action to declare certain acts with respect to arrests and prosecutions unconstitutional and to enjoin further prosecutions in connection with disorderly conduct type offenses related to antiwar demonstrations in District of Columbia during week of May 3, 1971, defendant officials were ordered to convey to counsel for plaintiffs for destruction all specified records that would in any way relate, inform or reflect that any member of class had been arrested or charged with an offense from and including May 3 through May 6, 1971, and it was ordered that seizures of members of class from and including May 3,

1971, through May 6, 1971, would be deemed to have been "detentions" rather than "arrests." *N. Sullivan et al. v. C. F. Murphy et al.* (1974, 380 F. Supp. 867).

Arrestees' action against District of Columbia police officials to compel expungement of records of arrest during civil disorders was ripe for determination where all prosecutions arising from the disorders had terminated, any danger of embarrassment or interference from judgments possibly inconsistent with those of the District of Columbia courts was obviated and a clear-cut federal controversy existed. *N. Sullivan et al. v. C. F. Murphy, Corporation Counsel, et al.* (1973, 478 F. 2d 938, 156 U.S. App. D.C. 28; cert. denied 94 S. Ct. 162, 414 U.S. 880).

Decision of the District of Columbia Court of Appeals that in view of statute which requires Washington police records to be preserved, courts sitting in the District of Columbia lack jurisdiction to order the expungement of police records was not binding upon the United States Court of Appeals for the District of Columbia circuit in action to redress violation of constitutional rights. *Id.*

Statute which provides that Washington police records must be preserved did not preclude the federal courts from giving relief, to persons in the District of Columbia deprived of constitutional rights, that would be available to persons in the various states from the appropriate federal courts of those districts and did not preclude expungement of arrest records. *Id.*

Where arrests made during May, 1971, civil disorders were presumptively invalid because usual arrest procedures were not followed, arrest records, consisting in part of photographs and fingerprints taken of arrestees while they were being held in detention, would be ordered expunged. *Id.*

Construction

Fact that statute which requires Washington police records to be preserved was enacted by Congress rather than by state legislature was not controlling on issue of applicability of the "Erie" doctrine with respect to District of Columbia Court of Appeals decision interpreting the statute. *N. Sullivan et al. v. C. F. Murphy, Corporation Counsel, et al.* (1973, 478 F. 2d 938, 156 U.S. App. D.C. 28; cert. denied 94 S. Ct. 162, 414 U.S. 880).

Preservation of records

Metropolitan police department and not Superior Court must be charged with safekeeping of records with respect to which a clarification has been made by a notation reflecting fact that arrest was mistaken and that no grounds of culpability existed. *District of Columbia v. J. Sophia* (D.C. App. 1973, 306 A. 2d 652).

§ 4-139. Discriminating laws not to be enforced.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-140a. Investigative arrests—Maximum period for questioning—Admissibility of confessions.

NOTES TO DECISIONS

Class actions

Person cannot represent class of which he is not a member; accordingly, plaintiff who was not subjected to police procedures under this section relating to interrogation of arrested persons or under statute relating to admissibility of prearrest statements could not assert class action on behalf of class that had been subject of police action based upon such statutes. *C. D. Long v. District of Columbia et al.* (1972, 469 F. 2d 927, 152 U.S. App. D.C. 187).

Stop and frisk

"Stop and frisk" which did not result in arrest or prosecution had no connection with this section relating to interrogation of arrested persons nor with statute relating to admissibility of prearrest statements sufficient to raise issue of constitutionality of such statute so as to require convention of three-judge district court. *C. D.*

Long v. District of Columbia et al. (1972, 469 F. 2d 927, 152 U.S. App. D.C. 187).

§ 4-142. Information and return after arrest.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-143a. Legal assistance for police in wrongful arrest cases.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Wrongful arrest

District of Columbia police inspector is individually liable for unlawful and unreasonable arrests of members of religious group, who were conducting peaceful prayer vigil near White House, where inspector had established police lines due to claimed danger of property damage and personal injury created by influx of "outsiders" into the vigil lines, but there was no evidence to suggest possibility of violence or property damage at scene of the vigil other than simple fact that "outsiders" who joined vigil had same appearance as persons who were present at monument grounds when "unknown" persons destroyed property. *L. Tatum et al. v. R. C. B. Morton et al.* (1974, 402 F. Supp. 719).

§ 4-144. Detention of witnesses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-145. Authority for search and arrest in cases of gaming-houses, bawdy-houses, and deposit or sale of lottery tickets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-147. Supervisory power over certain classes of business.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-148. Examination of books and premises of certain establishments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-155. Property clerk may administer oaths.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-156. Return of property by property clerk—Two or more claimants—Liability of property clerk—Property needed as evidence—Storage fees—Disposal after thirty days notice to owner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-159. Property coming into possession of police to be transmitted to property clerk—Disposition of property of deceased and incompetent persons—Storage of property—Fees for storage and custody of property—Sale of stored property—Deposit of collected fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-160. Sales at public auction—Procedure—Sales of motor vehicles with liens of record—Notice to lienors and lienees—Abandonment of liens—Notice to Recorder of Deeds—Application of proceeds of sale—Deposit of moneys in Treasury—Moneys and other property of insane persons excepted.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 4-161. Sale of unclaimed animals.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 4-163. Delivery of property to owner pending trial.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-171a. Private detectives required to give bond—Conditions of bond—Suits on bond by injured persons.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-174. Police laws and regulations applicable to private detectives.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-175. Compromise of felony—Withholding information—Receiving compensation from person arrested or liable to arrest—Permitting escape—Penalty.

CROSS REFERENCE

Policemen prohibited from receiving rewards for apprehension of prison fugitives and of conditional release and parole violators, see § 24-426.

§ 4-177. Police code—Publication authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-178. Legal effect of police code.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-182. Police Department band—Director.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-186. Bonding of Metropolitan Police.

The Mayor of the District of Columbia shall obtain a bond to secure the District against loss resulting from any act of dishonesty by any officer or member of the Metropolitan Police force. Bonds obtained under this section shall be in such amounts, and may secure the District against loss resulting from such other acts by officers and members of the Metropolitan Police force, as the Council of the District of Columbia shall consider appropriate. The Mayor may obtain such bonds by negotiation, without regard to section 1-808, and shall pay the cost of such bonds out of funds appropriated for the expenses of the Metropolitan Police Department for fiscal years beginning after June 30, 1953. The premium on any

such bond may cover periods not exceeding three years and may be paid in advance. (June 29, 1953, 67 Stat. 101, ch. 159, § 305(a); July 7, 1955, 69 Stat. 281, ch. 280, § 4.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-188. Funds for the prevention and detection of crime.

The Chief of Police of the Metropolitan Police Department is authorized, with the approval of the Mayor of the District of Columbia and within the limits of appropriations therefor, to make expenditures for the prevention and detection of crime under his certificate. The certificate of the Chief of Police for such expenditures shall be deemed a sufficient voucher for the sum therein expressed to have been expended. (Oct. 26, 1973, Pub. L. 93-140, § 9, 87 Stat. 505.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

§ 4-189. Attendance at pistol matches.

The Mayor of the District of Columbia is authorized to pay the expenses of officers and members of the Metropolitan Police Department and the Department of Corrections for attending pistol matches, including entrance fees, and is further authorized to permit officers and members to attend such matches without loss of pay or time. (Oct. 26, 1973, Pub. L. 93-140, § 10, 87 Stat. 506.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

Chapter 2.—UNITED STATES PARK POLICE

Sec.

4-209. Arrests on or within roads, parks, parkways, and other Federal reservations in the environs of the District of Columbia.

4-210. Rules and regulations—Penalties.

4-211. Environs of District of Columbia defined.

§ 4-209. Arrests on or within roads, parks, parkways, and other Federal reservations in the environs of the District of Columbia.

On and within roads, parks, parkways, and other Federal reservations in the environs of the District of Columbia the several members of the United States Park Police force shall have the power and authority to make arrests without warrant for any felony or misdemeanor committed in the presence or

view of such members in violation of any Federal law or regulation issued pursuant to law, or for any felony that in fact has been or is being committed in violation of any such law or regulation where they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony, and shall have power to take any person arrested by them, without unnecessary delay, before the Federal court having jurisdiction over the offense or before a United States commissioner specifically designated to try and sentence persons charged with petty offenses as provided in the Act of October 9, 1940 (54 Stat. 1058), or before any other officer having authority to hold or commit for the offense. Such police officers shall also have power upon such roads and within such parks, parkways, and other reservations to execute any warrant or other process issued by a court or officer of competent jurisdiction for the enforcement of the provisions of any Federal law or regulation issued pursuant to law: *Provided*, That the power and authority herein granted shall not extend to military personnel for offenses committed on military reservations: *Provided further*, That the power and authority herein granted shall not limit or restrict the investigative jurisdiction of the Federal Bureau of Investigation. (Mar. 17, 1948, ch. 136, § 1, 62 Stat. 81; Aug. 18, 1970, Pub. L. 91-383, § 4, 84 Stat. 826.)

REFERENCE IN TEXT

The Act of Oct. 17, 1968, Pub. L. 90-578, terminated the office of United States commissioner and established in place thereof the office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when two United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969. See §§ 401(a) and 402(a)(b) of said Act (28 U.S.C. 631 note).

The Act of Oct. 9, 1940 (54 Stat. 1058), referred to in text, was repealed by Act June 25, 1948, ch. 645, 62 Stat. 868, and is now covered by 18 U.S.C. 3401.

AMENDMENTS

1970—Act Aug. 18, 1970, Pub. L. 91-383, deleted the words "over which the United States has, or hereafter acquires, exclusive or concurrent criminal jurisdiction," immediately following "District of Columbia".

CROSS REFERENCES

Arrest without warrant, generally, see § 23-581.

Park Police authority to arrest at Dulles International Airport and Washington National Airport, see §§ 7-1304, 7-1408.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4-211.

§ 4-210. Rules and regulations—Penalties.

The Secretary of the Interior, with the approval or concurrence of the head of the agency having jurisdiction or control of any road, park, parkway, or other Federal reservation, or his duly authorized representative, is hereby authorized to make all needful rules and regulations for the regulation of traffic, for the protection of persons, property, health, and morals, to prevent breaches of the peace, to suppress affrays and unlawful assemblies and to aid in the enforcement of any of the rules and regulations so promulgated. To any rule or regulation there may be attached a reasonable penalty for the violation thereof not exceeding, however, a fine of not more than \$500, imprisonment for not exceeding six months, or both. (Mar. 17, 1948, ch. 136, § 2, 62 Stat. 81.)

NOTES TO DECISIONS

White House area demonstrations

The security of the President and the White House and the allocation of the scarce time and space resources in the White House area among competing applicants constitute a legitimate governmental interest which would justify some prior restraint on First Amendment activity in the White House area. However, this area is a unique site for exercise of First Amendment rights and deference cannot be accorded by the courts to an executive approach to use of the White House sidewalk that is rooted in a bias against expressive conduct. *A Quaker Action Group et al. v. R. C. B. Morton, Secretary of the Interior, et al.* (1975, 516 F.2d 717, 170 U.S. App. D.C. 124).

Provisions of the permit system adopted by the National Park Service for demonstrations in the White House area must be enforced uniformly and without discrimination; should require a permit for every public gathering in areas for which a permit is required; should define "public gathering" in terms that do not impermissibly discriminate against First Amendment activity; and may avoid unwieldy administrative burdens by exemptions from the permit requirement of groups of less than a specified size. *Id.*

§ 4-211. Environs of the District of Columbia defined.

For the purposes of sections 4-209 to 4-211, the environs of the District of Columbia are hereby defined as embracing Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the city of Alexandria in Virginia, and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland. (Mar. 17, 1948, ch. 136, § 3, 62 Stat. 81; Aug. 18, 1970, Pub. L. 91-383, § 4, 84 Stat. 826.)

AMENDMENT

1970—Act Aug. 18, 1970, Pub. L. 91-383, amended section by substituting "Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the city of Alexandria in Virginia, and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland" for "Arlington and Fairfax Counties and the city of Alexandria in Virginia, and Prince Georges, Anne Arundel, and Montgomery Counties in Maryland".

Chapter 4.—FIRE DEPARTMENT

Sec.

4-415. Fire prevention services for government institutions located outside the District.

§ 4-401. Fire department to embrace entire District of Columbia—Property of department to be assigned and located by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Discrimination in services provided

In claim that District of Columbia had discriminated in provision of municipal services, evidence failed to show substantial differences in fire services provided to section of District of Columbia which was 90% black as compared to area which was 98% white. *M. Burner et al. v. W. E. Washington et al.* (1975, 399 F.Supp. 44).

§ 4-402. Rules and regulations—Appointments to be under civil service—Selection of chief engineer and deputy chief engineers—Original appointment and promotion of privates—Vacancies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Minimum height requirement

Employment practice requiring District of Columbia firemen to be at least five feet seven inches, a requirement not based on any scientific, analytic or statistical study, not related to job performance and not required by state interest, violated Civil Service Commission employment regulation which was applicable to District of Columbia fire department and which required that there be rational relationship between job performance and employment practice and that demonstration of rational relationship includes showing that practice was professionally developed; thus, District of Columbia should be enjoined from excluding applicants for firemen positions solely on basis of height. *T. L. Fox, Jr. v. W. E. Washington et al.* (1975, 396 F. Supp. 504).

§ 4-403. Age limits on original appointments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-404. Two-platoon system—Classification of officers—Police surgeons to attend members of fire department—May call veterinary surgeon—Transfer to new grades.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-404a. Workweek established—Hours—Days off—Holidays—Exceptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-406. Appropriations for clothing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-407. Resignation from service—Membership in organization using strike methods prohibited—Conspiracy to obstruct operations of department—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-411. Use of equipment for volunteer fire organizations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-413. Apparatus—Construction.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-414. Reciprocal agreements for mutual aid.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-415. Fire prevention services for government institutions located outside the District.

The Commissioner of the District of Columbia is authorized to make provisions and payment for the furnishing of fire prevention and fire protection services to District of Columbia government institutions located outside the District of Columbia. (Oct. 26, 1973, Pub. L. 93-140, § 8, 87 Stat. 505.)

APPROPRIATIONS

See note under § 1-226a.

Chapter 5.—POLICEMEN AND FIREMEN'S RETIREMENT AND DISABILITY

Sec.

4-533a. Police and Firemen's Retirement and Relief Board.

§ 4-505. Commissioner to determine amount of pension relief.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-521. Definitions.

Wherever used in sections 4-521 to 4-535—

* * * * *

(3) The term "widow" means the surviving wife of a member or former member if—

(A) she was married to such member or former member (i) while he was a member, or (ii) for at least one year immediately preceding his death, or

(B) she is the mother of issue by such marriage.

* * * * *

(17) The term "average pay" means the highest annual rate resulting from averaging the mem-

ber's rates of basic salary in effect over any twelve consecutive months of police or fire service, with each rate weighted by the time it was in effect, except that if the member retires under section 4-527 and if on the date of his retirement under the subsection he has not completed twelve consecutive months of police or fire service, such term means his basic salary at the time of his retirement.

(As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 121(a), (d) (1), 88 Stat. 1040, 1041.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 121(a) of Act Sept. 3, 1974, Pub. L. 93-407, added par. (17), relating to average pay.

Section 121(d) (1) of such Act amended par. (3) (A) by substituting "one year" for "two years".

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 124 of Act Sept. 3, 1974, Pub. L. 93-407, title I, as amended Jan. 3, 1975, Pub. L. 93-635, § 3(b) (c), 88 Stat. 2175, provided:

"(a) The amendments [to §§ 4-521(17), 4-526, 4-527 (1) (2), 4-528(1) (3), 4-531(2) (3)] made by subsections (a) and (b) of section 121 shall apply with respect to any annuity which begins on or after July 1, 1975.

"(b) The amendment [enacting par. (3) of § 4-527] made by subsection (c) of section 121 shall take effect on the first day of the first pay period beginning more than thirty days after the date of enactment of this title.

"(c) Sections 122, 123, and 124 [enacting this section and § 4-533a, and amending § 4-533(2)] shall take effect on the date of enactment of this title."

Section 121(d) (2) of such Act provides: "The amendment [to § 4-521(3)] made by paragraph (1) shall apply with respect to any surviving wife of a member (as that term is defined in subsection (a) (1) of the Policemen and Firemen's Retirement and Disability Act) or former member irrespective of whether such wife became a widow (as that term is defined in such amendment) prior to, on, or after the date of the enactment of this Act, except that no annuity shall be paid by reason of the amendment made by paragraph (1) for any period prior to the first day of the first pay period beginning on or after July 1, 1974."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-414, 4-505, 4-518, 4-522, 4-523, 4-524, 4-525a, 4-526, 4-528, 4-533, 4-533a, 4-534, 4-535, 4-536, 4-537, 4-538, 4-832, 4-904, 6-1202a.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 3 section 207, title 5 sections 6308, 8101 of the U.S. Code.

§ 4-523. Creditable service—Military and other government service.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-524. Deductions, deposits and refunds—Order of persons entitled to refunds for deductions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-525. Medical and hospital service—Payment of by District on certificate of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-525a. Payment of medical expenses of total disability retirees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-526. Retirement for disability not incurred in performance of duty.

Whenever any member coming under sections 4-521 to 4-535 completes five years of police or fire service and is found by the Mayor to have become disabled due to injury received or disease contracted other than in the performance of duty, which disability precludes further service with his department, such member shall be retired on an annuity computed at the rate of 2 per centum of his average pay for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 per centum of his average pay: *Provided further*, That the annuity of a member retiring under this section shall be at least 40 per centum of his average pay. (Sept. 1, 1916, ch. 433, § 12(f), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3, and amended Sept. 3, 1974, Pub. L. 93-407, title I, § 121(b)(1), 88 Stat. 1040; Jan. 3, 1975, Pub. L. 93-635, § 10(a), 88 Stat. 2177.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Section 10(a) of Act Jan. 3, 1975, Pub. L. 93-635, struck out "basic salary at time of retirement" and inserted in lieu thereof "average pay".

1974—Section 121(b)(1) of Act Sept. 3, 1974, Pub. L. 93-407, struck out "his basic salary at the time of retirement" each place it occurred and inserted in lieu thereof "his average pay".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 10(b) of Act Jan. 3, 1975, Pub. L. 93-635, provided that the amendment shall apply with respect to any annuity which begins on or after July 1, 1975.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-521.

NOTES TO DECISIONS

Evidence

Evidence that, inter alia, fireman's job frustration stemmed from his belief that job was beneath his dignity

and education was sufficient to sustain finding that fireman, who was suffering from emotional difficulties and functional back and chest pains, be retired by reason of disability not incurred in nor aggravated by performance of duty as fireman. *A. R. Lewis v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 330 A. 2d 253).

Board of Appeals and Review with regard to order of Police and Firemen's Retirement and Relief Board involuntarily separating member of police department from the department for disability not contracted in or aggravated by performance of duty had to make basic findings which were supported by substantial evidence in record before stating ultimate facts and conclusions and there had to be a demonstration in the findings of a rational connection between the facts found and the choice made. *M. E. Brewington v. District of Columbia Board of Appeals and Review* (D.C. App. 1973, 299 A. 2d 145).

Not service connected

Where fireman was unable to get along with his colleagues over the years and his job frustration stemmed from his belief that job was beneath his dignity and educational abilities, such factors, relating to his basic personality and making him unfit for duty as a fireman, could not be considered to have been aggravating factors incurred in the "performance of duty," and thus he was retired for non-service-connected disabilities. *A. R. Lewis v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 330 A. 2d 253).

District of Columbia Board of Appeals and Review properly found that police officer suffered from a mental disorder caused or aggravated by pressures of life stemming from his background and childhood, rather than from police duty. *M. E. Brewington v. District of Columbia Board of Appeals and Review* (D.C. App. 1973, 309 A. 2d 112).

§ 4-527. Retirement for disability while performing or not performing duty.

(1) Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed at the rate of 2½ per centum of his average pay for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 per centum of his average pay, nor shall it be less than 66⅔ per centum of his average pay.

(2) In any case in which the proximate cause of an injury incurred or disease contracted by a member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of 2½ per centum of his average pay for each year or portion thereof of his service: *Provided*, That such annuity shall not exceed 70 per centum of his average pay, nor shall it be less than 66⅔ per centum of his average pay.

(3) A member shall be retired under this section only upon the recommendation of the Board of Police and Fire Surgeons and the concurrence therein by the Mayor, except that in any case in which a member seeks his own retirement under this section, he shall, in the absence of such recommendation, provide the necessary evidence to form the basis

for the approval of such retirement by the Mayor. (Sept. 1, 1916, ch. 433, § 12(g), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85-157, § 3, and amended Oct. 23, 1962, 76 Stat. 1133, Pub. L. 87-857, § 1; Oct. 26, 1970, Pub. L. 91-509, § 1(4), 84 Stat. 1137; Sept. 3, 1974, Pub. L. 93-407, title I, § 121(b) (1) (2), (c), 88 Stat. 1040.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 121(b) (1) (2) of Act Sept. 3, 1974, Pub. L. 93-407, struck out "his basic salary at the time of retirement" and "his basic salary at the time of his retirement", each place it occurred in pars. (1) and (2), and inserted in lieu thereof "his average pay".

Section 121(c) of such Act added par. (3).

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-521.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-183a, 4-521, 4-530, 4-531, 4-533.

NOTES TO DECISIONS

Evidence

Unanimous medical opinion, as reflected in medical reports of eight physicians who had been involved in medical history of policeman seeking determination that he was disabled for performance of duty, that policeman was not disabled supported Board of Appeals and Review determination that policeman was not disabled. *H. M. Brooks, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 317 A.2d 864).

Substantial evidence, including medical testimony, supported Board of Appeals and Review finding that policeman who sustained back injuries on separate occasions was not disabled for duty and therefore not entitled to disability retirement from police department. *E. F. Morgan v. District of Columbia Board of Appeals and Review* (D.C. App. 1973, 305 A.2d 243).

Where there was evidence pointing to original causation of policeman's disabling personality disorder being due to series of injuries incurred in the performance of official duties and where there was a paucity of countervailing evidence disproving such inference, finding of Board of Appeals and Review adverse to policeman, rendered by Board on reconsideration of its original decision holding that disability was caused by injuries incurred in line of duty, was erroneous. *R. A. Crider v. District of Columbia Board of Appeals and Review* (D.C. App. 1973, 299 A.2d 134).

Service connected disability

Where cause of fireman's disability is obscured or concededly due to factors predating his employment, in order to be retired for service-connected disability, fireman must prove that his disease or injury was subsequently aggravated by events occurring in the line of duty. *A. R. Lewis v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 330 A.2d 253).

§ 4-528. Optional retirement—Conditions—Suspension of retirement provisions during emergency—Credit for unused sick leave.

(1) Any member who completes twenty years of police or fire service may, after giving at least sixty days' written advance notice to his department head stating his intention to retire and stating the date on which he will retire, voluntarily retire from the service and shall be entitled to an annuity computed at the rate of 2½ per centum of his average pay for each year of service; except that the rate of

3 per centum of his average pay shall be used to compute each year's police or fire service in excess of twenty years: *Provided*, That such notice requirement may be waived by the department head when, in his opinion, circumstances justify such waiver: *Provided further*, That whenever the Mayor or the Chief of the Executive Protective Service, or the Chief of the United States Park Police force, or the Chief of the United States Secret Service division shall determine that there exists an emergency which is likely to endanger the safety of the public and that the public safety cannot be adequately protected except by suspending the retirement provisions of this paragraph, then the Mayor or any of said Chiefs shall be authorized to suspend the retirement provisions of this paragraph in any one or more of the departments under their respective jurisdictions until such time as, in the opinion of the Mayor or any of said Chiefs, respectively, public safety can be adequately protected without such suspension.

* * * * *

(3) No annuity granted under paragraph (1) or (2) of this section shall exceed 80 per centum of the average pay of such member.

* * * * *

(As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 121(b) (1)-(3), 88 Stat. 1040.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 121(b) (1), (2) of Act Sept. 3, 1974, Pub. L. 93-407, struck out "his basic salary at the time of retirement" and "his basic salary at the time of his retirement", in par. (1), and inserted in lieu thereof "his average pay".

Section 121(b) (3) of such Act struck out "the basic salary of such member at the time of retirement", in par. (3), and inserted in lieu thereof "his average pay".

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-521.

§ 4-531. Survivor benefits and annuities—Amount—To whom payable—Election of type of annuity.

* * * * *

(2) In case of the death of any member before retirement, or of any former member after retirement, leaving a widow or widower, such widow or widower shall be entitled to receive an annuity in the greater amount of (1) 40 per centum of such member's average pay at the time of death, or 40 per centum of the basis upon which the annuity, relief, or retirement compensation being received by such former member at the time of death was computed, or (2) 40 per centum of the corresponding salary for step 6 of salary class 1 of the District of Columbia Police and Firemen's Salary Act salary schedule currently in effect at the time of such member or former member's death: *Provided*, That such annuity shall not exceed the current rate of compensation of the position occupied by such member at the time of death, or by such former member immediately prior to retirement.

(3) Each surviving child or student-child of any member who dies before retirement, or of any former member who dies after retirement, shall be entitled to receive an annuity equal to the smallest of (1) 60 per centum of the member's average pay at the time of his death or of the basis upon which the former member's annuity at the time of his death was computed, divided by the number of eligible children; (2) \$996; or (3) \$2,988 divided by the number of eligible children: *Provided*, That such member or former member is survived by a wife or husband. If such member or former member is not survived by a wife or husband, each surviving child or student-child shall be paid an annuity equal to the smallest of (1) 75 per centum of the member's average pay at the time of his death or of the basis upon which the former member's annuity at the time of his death was computed, divided by the number of eligible children; (2) \$1,200; or (3) \$3,600 divided by the number of eligible children.

* * * * *

(As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 121(b) (4), (5), 88 Stat. 1040.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 121(b) (4) of Act Sept. 3, 1974, Pub. L. 93-407, struck out of par. (2) the words "basic salary" and "subclass (a)," and inserted in lieu thereof "average pay" and "of salary", respectively.

Section 121(b) (5) of such Act struck out of par. (3) the words "basic salary" each place it occurred and inserted in lieu thereof "average pay".

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-521.

§ 4-532. Funeral expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-533. Duties of Mayor in retirement and annuity matters—Certification of physical condition of member—Written notice of hearing—Procedure at hearings—Subpena—Contempt proceedings—Disability retiree to report employment and undergo medical examination.

* * * * *

(2) If a member is retired under section 4-526 or 4-527 and is employed on or after the effective date of the District of Columbia Police and Firemen's Salary Act amendments of 1972, such member shall, in accordance with such regulations as the Mayor shall prescribe, notify the Mayor of the employment; and the Mayor shall, as soon as practicable after the receipt of such notice, require each such member to undergo a medical examination (satisfactory to the Mayor) of the disability upon which the member's retirement under such section is based. The Mayor shall not require employment questionnaires or the

medical examination of such member after he reaches the age of 50. (As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 123, 88 Stat. 1041.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 123 of Act Sept. 3, 1974, Pub. L. 93-407, amended par. (2) by inserting at the end thereof a new sentence, prohibiting the Commissioner from requiring employment questionnaires or the medical examination for certain members after reaching age 50.

§ 4-533a. Police and Firemen's Retirement and Relief Board.

(a) In order to carry out his responsibilities under sections 4-521 to 4-535 with respect to retirement and disability determinations, and related functions, the Mayor of the District of Columbia shall establish a Police and Firemen's Retirement and Relief Board (hereinafter in this section referred to as the "Board"). The Board shall be composed of—

(1) members and alternates appointed from among persons who are employees of the District of Columbia, one member and alternate each from the District of Columbia Personnel Office, Corporation Counsel, Department of Human Resources, Metropolitan Police Force, and the Fire Department of the District of Columbia; and

(2) two members, one of whom shall be a physician, appointed from among persons who are not officers or employees of the District of Columbia. The member, and alternate, appointed to the Board from among employees of the Department of Human Resources shall both be medical officers. All appointments shall be made by the Mayor.

(b) The members appointed under subsection (a) (2) shall be appointed for two years, and shall be entitled to receive compensation for each day they are actually engaged in carrying out duties vested in the Board in the same manner as persons employed intermittently under section 3109 of title 5 of the United States Code. Such members shall be appointed within ninety days after September 3, 1974.

(c) The Mayor shall establish rules for the Board to assure that the Board functions fairly and equitably. The Mayor shall provide the staff necessary for the Board.

(d) In addition to the members and alternates of the Board designated by subsection (a) of this section, in all cases of retirement, disability, or other relief involving a member of the Executive Protective Service or a member of the United States Secret Service, who contribute to the Policemen and Firemen's Relief Fund of the District of Columbia, a member and alternate of the Executive Protective Service or a member and alternate of the United States Secret Service, as designated by the Director, United States Secret Service, as appropriate shall sit as a member of the Police and Firemen's Retirement and Relief Board. (Sept. 3, 1974, Pub. L. 93-407, title I, § 122, 88 Stat. 1041, as amended Jan. 3, 1975, Pub. L. 93-635, § 19, 88 Stat. 2179.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was not enacted as part of the Policemen and Firemen's Retirement and Disability Act, which comprises sections 4-521 to 4-535.

In subsec. (b), "September 3, 1974" was substituted for "the date of enactment of this title".

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, added subsec. (d).

EFFECTIVE DATE

Section effective Sept. 3, 1974, see sec. 124(c) of Act Sept. 3, 1974, Pub. L. 93-407, set out as a note under § 4-521.

ORDER ESTABLISHING POLICE AND FIREMEN'S RETIREMENT AND RELIEF BOARD

Organization Order No. 48, Commissioner's Order No. 74-199, September 25, 1974, which established the Police and Firemen's Retirement and Relief Board, is set out in the appendix to title 1, Administration.

CROSS REFERENCE

Rules to carry out purposes of sections 4-521 to 4-535, see § 4-535.

§ 4-534. Payment of annuities—Order of payment on death of annuitant—Waiver.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

COMMISSIONER'S ORDER ESTABLISHING POLICIES AND PROCEDURES FOR ADMINISTERING § 4-534(2)

Commissioner's Order No. 74-31, Feb. 12, 1974, provided:

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967 and pursuant to the provisions of Public Law 92-410, approved August 29, 1972, it is hereby Ordered That:

I. Purpose:

The policies and procedures established herein shall govern the administration of paragraph (2) of subsection (m) of the Policemen and Firemen's Retirement and Disability Act (as amended by P.L. 92-410; 86 Stat. 642) [D.C. Code, sec. 4-534(2)], which requires that any officer or member of the Metropolitan Police force or Fire Department of the District of Columbia, the United States Park Police force, the Executive Protective Service or the United States Secret Service who is retired under subsection (f) or (g) of the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-526 or sec. 4-527) and who is employed on or after May 14, 1972, shall notify the Commissioner of such employment and shall undergo a medical examination (satisfactory to the Commissioner) of the disability upon which the officer or member's retirement under such subsection is based.

II. Delegation of Functions:

A. *Director of Personnel.* In his capacity as Chairman, Police and Firemen's Retirement and Relief Board (hereinafter referred to as the "Retirement Board"), the Director of Personnel shall be responsible for coordinating the administration of the aforementioned paragraph (2) in accordance with these policies and procedures.

B. *Police and Firemen's Retirement and Relief Board.*

1. The Retirement Board shall be responsible for giving timely written notice to each officer or member who is

retired under subsection (f) or (g) of the Policemen and Firemen's Retirement and Disability Act of the promulgation of these policies and procedures and, if he is employed on or after May 14, 1972, of the requirement to notify the Retirement Board, in writing within 30 days of the date of its notice, of the type, location and specific duties of such employment.

2. After notification from each employed disabled retiree who resides within the Washington Metropolitan Area (the District of Columbia, the cities of Alexandria and Falls Church in Virginia, Montgomery and Prince George's Counties in Maryland, and Arlington and Fairfax Counties in Virginia), the Retirement Board shall direct the retiree to report to the Board of Police and Fire Surgeons (hereinafter referred to as the "Board of Surgeons") for a medical examination of the disability for which he was retired to determine his current physical and/or mental condition.

3. (a) After notification from each employed disabled retiree who resides outside the Washington Metropolitan Area, the Retirement Board shall direct the retiree to submit, in lieu of appearing before the Board of Surgeons, a statement of medical examination from a medical officer of any Federal, State or local government agency or any other licensed physician of the State in which he resides. To the extent possible, such medical officer or physician shall be certified in the field most nearly related to the retiree's disability. Such statement shall be submitted to the Board of Surgeons and must certify as to the retiree's current physical and/or mental condition, with specific reference to the disability for which he was retired. The statement must also certify that the examining physician is not related by blood or marriage to the retiree. Any expenses incurred in obtaining such statement will be borne by the retiree.

(b) Prior to such examination, the retiree shall submit to the Board of Surgeons the name, address and specialty field of the physician who is to perform the examination. A copy of the medical report upon which the officer or member's retirement was based shall be furnished to the examining physician for use in connection with the examination.

(c) The Retirement Board may, in its discretion, require the retired officer or member who resides outside the Washington Metropolitan Area to report to the Board of Surgeons for the medical examination. Any expenses incurred by the retiree who is required to do so will be borne by the retiree.

4. The Retirement Board shall review the written report of medical examination submitted to it by the Board of Surgeons in the case of each employed disabled retiree to determine the current status of the retiree's disability. Where it finds that an employed disabled retiree has recovered from his disability, the Retirement Board shall apply the recovery from disability provision of subsection (j) of the Policemen and Firemen's Retirement and Disability Act (D.C. Code, sec. 4-530) (see item III below).

5. The Retirement Board may, in its discretion, require any employed disabled retiree to personally appear before it to give testimony under oath regarding his present physical and/or mental condition. Any expenses incurred by the retiree who is required to do so will be borne by the retiree.

C. *Board of Police and Fire Surgeons*

1. (a) The Board of Surgeons shall schedule and conduct a thorough medical examination to determine the present physical and/or mental condition of each employed disabled retiree who resides within the Washington Metropolitan Area. A specialist in the field most nearly related to the retiree's disability (e.g., orthopedics, neurology) shall be consulted, as deemed necessary, in determining the retiree's present physical and/or mental condition.

(b) The Board of Surgeons shall thoroughly evaluate all pertinent medical records and employment information in determining the retiree's present physical and/or mental condition.

(c) In the case of each employed disabled retiree it examines, the Board of Surgeons shall submit to the Retirement Board a written report of such examination, with specific reference to the disability for which the

individual was retired. Such report shall include a statement as to whether or not, in the Board of Surgeons' opinion, the retiree has recovered from his disability.

2. With respect to each employed disabled retiree examined by a physician outside the Washington Metropolitan Area, the Board of Surgeons shall submit to the Retirement Board a written report of its evaluation of such physician's statement of medical examination, together with such statement and related employment information, with specific reference to the disability for which the individual was retired. Such report shall include a statement as to whether or not, in the Board of Surgeons' opinion, the retiree has recovered from his disability.

III. Recovery From Disability:

1. In the case of any officer or member retired under subsection (f) or (g) of the Policemen and Firemen's Retirement and Disability Act, who is found to have recovered from his disability, before reaching the age of fifty, payment of his annuity shall cease upon reemployment in the department from which he was retired or one year from the date of the medical examination showing such recovery whichever is earlier.

2. A retiree who is found to have recovered from his disability and who applies for reinstatement in the department from which he was retired shall be reinstated in the same or nearest equivalent grade and salary available as that received at the time of his retirement provided that he meets the current entrance requirement of such department as to character.

IV. Effective Date:

The policies and procedures established herein shall take effect this date [Feb. 12, 1974].

§ 4-535. Delegation of functions by Commissioner—Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Rules to assure that Police and Firemen's Retirement and Relief Board functions fairly and equitably, see § 4-533a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-414, 4-505, 4-518, 4-521, 4-522, 4-523, 4-524, 4-525a, 4-526, 4-528, 4-533, 4-533a, 4-534, 4-537, 4-538, 4-832, 4-904, 6-1202a.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 3 section 207, title 5 sections 6308, 8101 of the U.S. Code.

Chapter 6.—TRIAL BOARDS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2-1236.

§ 4-601. Trial boards may compel attendance of witnesses—Fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—AWARDS FOR MERITORIOUS SERVICE

§ 4-702. Committee to make awards.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-704. Appropriation authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—SALARIES

Sec.

- 4-827. Minimum rate for original appointments—Higher rates for reappointments.
- 4-838. Annual comparability study of police and firemen's salaries and benefits.
- 4-839. Recommendations for salary adjustments—Mediation of labor-management disputes.

§ 4-802. Salary increase denied if service unsatisfactory—Removal for inefficiency—Additional compensation for efficiency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-807. Additional compensation for working on holidays.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-808. Holiday defined.

As used in section 4-807 the word "holiday" means the following: The 1st day of January, the third Monday in February, the 4th day of July, the last Monday in May, the first Monday in September, the second Monday in October, the fourth Monday in October, Thanksgiving Day, the 25th day of December, and, with respect to officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia, such other holidays as may be designated by the Council of the District of Columbia, and with respect to officers and members of the Executive Protective Service and the United States Park Police force, such other holidays as may be designated by Executive order. (Oct. 24, 1951, 65 Stat. 607, ch. 544, § 2; July 18, 1958, 72 Stat. 378, Pub. L. 85-533, § 4(b); Sept. 3, 1974, Pub. L. 93-407, title I, § 102, 88 Stat. 1038.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 102 of Act Sept. 3, 1974, Pub. L. 93-407, amended section by striking out “the 22d day of February”, “the 30th day of May”, and “the 11th day of November”, and inserting in lieu thereof “the third Monday in February”, “the last Monday in May”, “the second Monday in October”, and “the fourth Monday in October”.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-823.

SALARY SCHEDULE

Salary class and title	Service step—								
	1	2	3	4	5	6	7	8	9
Class 1: Fire private, police private.....	\$11,600	\$11,950	\$12,530	\$13,110	\$14,035	\$14,965	\$15,545	\$16,125	\$16,705
Class 2: Fire inspector.....	13,225	14,035	14,850	15,660	16,470	17,285	18,095	-----	-----
Class 3: Detective, assistant pilot, assistant marine engineer.....	14,500	15,225	15,950	16,675	17,400	18,125	18,850	-----	-----
Class 4: Fire sergeant, police sergeant, detective sergeant.....	15,755	16,540	17,330	18,120	18,910	19,695	-----	-----	-----
Class 5: Fire lieutenant, police lieutenant.....	18,210	19,125	20,035	20,945	21,855	-----	-----	-----	-----
Class 6: Marine engineer, pilot.....	19,895	20,885	21,880	22,870	-----	-----	-----	-----	-----
Class 7: Fire captain, police captain.....	21,575	22,655	23,735	24,810	-----	-----	-----	-----	-----
Class 8: Battalion fire chief, police inspector.....	25,010	26,260	27,515	28,770	-----	-----	-----	-----	-----
Class 9: Deputy fire chief, deputy chief of police.....	29,350	31,335	33,325	35,315	-----	-----	-----	-----	-----
Class 10: Assistant chief of police, assistant fire chief, commanding officer of the Executive Protection Service, commanding officer of the U.S. Park Police.....	34,800	37,120	39,440	-----	-----	-----	-----	-----	-----
Class 11: Fire chief, chief of police.....	40,250	42,690	-----	-----	-----	-----	-----	-----	-----

*(As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 101(a) (1), 88 Stat. 1036; Jan. 3, 1975, Pub. L. 93-635, § 1, 88 Stat. 2173.)

AMENDMENTS

1975—Section 1 of Act Jan. 3, 1975, Pub. L. 93-635, substituted “16,540” for “16,510” in service step 2 of class 4 of the salary schedule.

1974—Section 101(a) (1) of Act Sept. 3, 1974, Pub. L. 93-407, amended the salary schedule set out in subsec. (a) generally.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 1 of Act Jan. 3, 1975, Pub. L. 93-635, provided in part that the amendment of the salary schedule is effective on the first day of the first pay period beginning on or after July 1, 1974.

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 103 of Act Sept. 3, 1974, Pub. L. 93-407, 88 Stat. 1038, as amended Jan. 3, 1975, Pub. L. 93-635, §§ 3(a), 18, 88 Stat. 2175, 2179, provided:

“(a) Except as provided in subsections (b), (c), and (d), the amendments made by this part and subsection (b) of the first section [amendment of §§ 4-808, 4-823, 4-825, 4-828, and enactment of provisions set out as notes under § 4-823] shall take effect on and after the first day of the first pay period beginning on or after July 1, 1974.

“(b) The amendment made by paragraph (6) of section 101 [amendment of § 4-828] shall take effect on and after the first day of the first pay period beginning on or after January 1, 1974.

“(c) The amendments made by paragraphs (8) and (9) of section 101 [amendments of § 4-832] shall take effect on and after the first day of the first pay period beginning on or after May 1, 1972.

“(d) The amendment made by paragraph (4) of section 101 [amendment of § 4-827] shall take effect on and after the first day of the first pay period beginning on or after June 1, 1974.”.

GROUP INSURANCE

Section 104(c) of Act Sept. 3, 1974, Pub. L. 93-407, title I, provided:

“(c) For the purpose of determining the amount of insurance for which an officer or member is eligible under the provisions of chapter 87 of title 5, United States Code (relating to government employees group life insurance),

§ 4-823. Salary Schedules—Rates of basic compensation of officers and members of Metropolitan Police force and Fire Department.

(a) Except as provided in subsection (b), the annual rates of basic compensation of the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia shall be fixed in accordance with the following schedule of rates:

all changes in rates of compensation or salary which result from the enactment of this title shall be held and considered to be effective as of July 1, 1974.”

RETROACTIVE COMPENSATION UNDER ACT SEPT. 3, 1974,
PUBLIC LAW 93-407

Section 104(a) (b) of title I of the above described Act provided:

“(a) Retroactive compensation or salary shall be paid by reason of the amendments made by this title only in the case of an individual in the service of the District of Columbia government or of the United States (including service in the Armed Forces of the United States) on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the Executive Protective Service who retired during the period beginning on the first day of the first pay period which begins on or after July 1, 1974, and ending on the date of enactment of this Act for services rendered during such period, and (2) in accordance with the provisions of subchapter 8 of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the first day of the first pay period which begins on or after July 1, 1974, and ending on the date of enactment of this Act, by an officer or member who dies during such period.

“(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia.”

PLACEMENT IN SERVICE STEP 4 OF SALARY CLASS 2 OF THOSE
IN SERVICE STEPS 1, 2, OR 3 IMMEDIATELY PRIOR TO THE
1974 AMENDMENT

Section 101(b) of Act Sept. 4, 1974, Pub. L. 93-407, provided: “Each officer or member who immediately prior to the effective date of the amendment [to the salary schedule in § 4-823] made by paragraph (1) of subsection (a) was assigned to service step 1, service step 2, or service step 3 of salary class 2 shall be placed in and receive basic compensation in service step 4 of salary class 2.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-827, 4-828, 4-832, 4-833, 4-834, 4-835, 4-836, 4-837, 4-904.

§ 4-825. Additional compensation—Helicopter pilots and bomb disposal duty.

Each officer or member of the Metropolitan Police force, Executive Protective Service, and United States Park Police force assigned on or after the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972—

(1) to perform the duty of a helicopter pilot, or

(2) to render explosive devices ineffective or to otherwise dispose of such devices.¹

shall receive, in addition to his scheduled rate of basic compensation, \$2,270 per annum so long as he remains in such assignment. The additional compensation authorized by this section shall be paid to an officer or member in the same manner as he is paid basic compensation to which he is entitled, except that when such an officer or member ceases to be in such an assignment, the loss of such additional compensation shall not constitute an adverse action for the purposes of section 7511 of title 5 of the United States Code. No officer or member who receives the additional compensation authorized by this section may receive additional compensation under section 4-828. (Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title II, § 202; Sept. 2, 1964, 78 Stat. 881, Pub. L. 88-575, title I, § 103; Aug. 29, 1972, Pub. L. 92-410, title I, § 104, 86 Stat. 636; Sept. 3, 1974, Pub. L. 93-407, title I, § 101(a) (2), (3), 88 Stat. 1036.)

AMENDMENT

1974—Section 101(a) (2) of Act Sept. 3, 1974, Pub. L. 93-407, amended the second sentence to provide that the loss of such additional compensation when such assignment ceases shall not constitute an adverse action.

Section 101(a) (3) of such Act amended the first sentence by substituting "\$2270" for "\$2100".

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-823.

§ 4-827. Minimum rate for original appointments—Higher rates for reappointments.

(a) Except as provided in subsection (b), all original appointments of Police and Fire Privates shall be made at the minimum rate set forth in the schedule in section 4-823, and the first year of service shall be probationary.

(b) Any officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the Executive Protective Service, or the United States Park Police force who separates from that force, department, or service, and who is subsequently reappointed to such force, department, or service within three years after the date of such separation shall receive any scheduled rate of basic compensation provided in salary class 1 of the salary schedule in section 4-823(a) which does not exceed the scheduled rate of basic compensation being paid at the time of such reappointment for the class and service step he had attained at the time of his separation. For purposes of this subsection, no additional compensation authorized by sections 4-823 to 4-837 shall be used in determining service step placement.

¹ So in original, should be a comma.

(Aug. 1, 1958, 72 Stat. 483, Pub. L. 85-584, title III, § 301; Sept. 3, 1974, Pub. L. 93-407, title I, § 101(a) (4), 88 Stat. 1036.)

AMENDMENT

1974—Section 101(a) (4) of Act Sept. 3, 1974, Pub. L. 93-407, amended section by (A) striking out "All" and inserting in lieu thereof "(a) Except as provided in subsection (b), all", and (B) by adding at the end thereof subsection (b).

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-823.

§ 4-828. Authority to establish and determine positions to be included as Technicians in Classes 1, 2, and 4.

(a) The Mayor of the District of Columbia, in the case of the Metropolitan Police force and the Fire Department of the District of Columbia, the Secretary of the Treasury, in the case of the Executive Protective Service, and the Secretary of the Interior, in the case of the United States Park Police force, are authorized to establish and determine, from time to time, the positions in salary classes 1, 2, and 4 to be included as technicians' positions.

(b) Each officer or member—

(1) who immediately prior to the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972—

(A) was in a position assigned to subclass (b) of salary class 1 or 2 or subclass (c) of salary class 4, or

(B) was in salary class 4 and was performing the duty of a dog handler, or

(2) whose position is determined under subsection (a) to be included in salary class 1, 2, or 4 on or after such date as a technician's position, shall on or after such date receive, in addition to his scheduled rate of basic compensation, \$735 per annum. An officer or member described in paragraph (1) (A) or (2) shall receive the additional compensation authorized by this subsection until his position is determined under subsection (a) not to be included in salary class 1, 2, or 4, as a technician's position or until he no longer occupies such position, whichever occurs first. An officer or member described in paragraph (1) (B) shall receive such compensation until the position of dog handler is determined under subsection (a) not to be included in salary class 4 as a technician's position or until he no longer performs the duty of dog handler, whichever first occurs. If the position of dog handler is included under subsection (a) as a technician's position, an officer or member performing the duty of a dog handler may not receive both the additional compensation authorized for an officer or member occupying a technician's position and the additional compensation authorized for officers and members performing the duty of a dog handler.

(c) Each officer or member who immediately prior to the effective date of the District of Columbia Police and Firemen's Salary Act Amendments of 1972 was assigned as a detective sergeant in subclass (b) of salary class 4 shall on or after such date, receive, in addition to his scheduled rate of basic compensation, \$540 per annum so long as he remains

in such assignment. Each officer or member who is promoted after such date to the rank of detective sergeant shall receive, in addition to his scheduled rate of basic compensation, \$540 per annum so long as he remains in such assignment.

(d) The additional compensation authorized by subsections (b) and (c) shall be paid to an officer or member in the same manner as he is paid the basic compensation to which he is entitled.

(e) Whenever any officer or member receiving additional compensation authorized by subsection (b) or (c) is no longer entitled to receive such additional compensation, without a change in salary class, he shall receive, irrespective of any subsequent salary schedule or service step adjustment authorized by sections 4-823 to 4-837, basic compensation equal to the sum of his existing scheduled rate of basic compensation and the amount of such additional compensation until his schedule rate of basic compensation equals or exceeds such sum.

(f) The loss of the additional compensation authorized by subsection (b) or (c) shall not constitute an adverse action for the purposes of section 7511 of title 5 of the United States Code. (As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 101(a)(5)-(7), 88 Stat. 1037; Jan. 3, 1975, Pub. L. 93-635, § 2, 88 Stat. 2174.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Section 2(a) of Act Jan. 3, 1975, Pub. L. 93-635, amended subssecs. (a), (b), (c), and (d), generally.

Section 2(b) of the Act added subssecs. (e) and (f).

Section 2(c) of the Act repealed pars. (5), (6), and (7) of section 101(a) of Act Sept. 3, 1974, Pub. L. 93-407, effective as of Jan. 5, 1975. Such paragraphs had amended this section, as specified in the 1974 amendment notes contained below.

1974—Section 101(a)(5) of Act Sept. 3, 1974, Pub. L. 93-407, purported to amend the entire section. It appears that amendment of the third sentence of subsec. (b) was intended, so as to substitute "until the position of dog handler . . . whichever first occurs" for "so long as he performs the duty of a dog handler". The amendment was repealed by sec. 2(c) of Act Jan. 3, 1975, Pub. L. 93-635.

Section 101(a)(6) of such Act amended the section by adding subssecs. (e) and (f). The amendment was repealed by sec. 2(c) of Act Jan. 3, 1975, Pub. L. 93-635.

Section 101(a)(7) of such Act purported to amend subsec. (a) by substituting "\$735" for "\$680" [the figure "\$680" actually appeared in subsec. (b)]; and amended subsec. (c) by substituting "\$540" for "\$500". The amendment was repealed by sec. 2(c) of Act Jan. 3, 1975, Pub. L. 93-635.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 2(a) of Act Jan. 3, 1975, Pub. L. 93-635, provided in part that the amendment of subssecs. (a), (b), (c), and (d) is effective on and after the first day of the first pay period beginning on or after July 1, 1974.

Section 2(b) of the Act provided in part that the amendment adding subssecs. (e) and (f) is effective on and after the first day of the first pay period beginning on or after January 1, 1974.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-823.

§ 4-831. Demotion—Rate of compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-832. Additional compensation for service longevity.

(a)(1) * * *

(2) For purpose of paragraph (1), continuous service as an officer or member includes only those periods of his service determined to have been satisfactory service and any period of his service in the Armed Forces of the United States other than any period of such service (A) determined not to have been satisfactory service, (B) rendered before appointment as an officer or member, or (C) rendered after resignation as an officer or member.

* * * * *

(c) Notwithstanding any other provision of this or any other law, each deputy chief of the Metropolitan Police force and of the Fire Department of the District of Columbia shall, upon completion of thirty years of continuous service on the police force or fire department, as the case may be, be placed in, and receive basic compensation at, the highest service step in the salary class to which his position is assigned in the salary schedule contained in section 4-823. For purposes of this subsection, in computing a deputy chief's continuous service on the police force or fire department, there shall be included only those periods of his service determined to have been satisfactory service and any period of his service in the Armed Forces of the United States other than any period of such service—

(1) determined not to have been satisfactory service,

(2) rendered before appointment as an officer or member, or

(3) rendered after resignation as an officer or member.

(As amended Sept. 3, 1974, Pub. L. 93-407, title I, § 101(a)(8), (9), 88 Stat. 1037.)

AMENDMENT

1974—Section 101(a)(8) of Act Sept. 3, 1974, Pub. L. 93-407, amended subsection (a)(2) by inserting "only those periods of his service determined to have been satisfactory service and" immediately preceding "any period of his service in the Armed Forces".

Section 101(a)(9) of such Act amended the second sentence of subsec. (c) by inserting "only those periods of his service determined to have been satisfactory service and" immediately preceding "any period of his service in the Armed Forces".

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 4-823.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 204 of title 3, U.S. Code.

§ 4-835. Council authorized to promulgate regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-837. Delegation of authority by Commissioner, Secretary of Treasury and Secretary of Interior—Exception.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4-827, 4-828, 4-832, 4-833, 4-834, 4-904.

§ 4-838. Annual comparability study of police and firemen's salaries and benefits.

(a) The Commissioner of the District of Columbia, and after January 2, 1975, the Mayor of the District of Columbia, shall annually conduct a thorough study of the compensation being paid officers and members of the police and fire departments of other jurisdictions in the Washington metropolitan area and other cities of comparable size. The annual study may include other conditions of employment of police and firemen, such as hours of work, health benefits, retirement benefits, sick pay, and vacation time. The annual study shall also include the current percentage change in the Consumer Price Index for the Washington metropolitan area published by the Bureau of Labor Statistics, Department of Labor, and rates of compensation for Federal and District of Columbia employees having comparable duties and responsibilities.

(b) (1) In order to conduct the annual study specified in subsection (a), the Commissioner, or the Mayor, as the case may be, shall establish a city personnel salary and benefits study committee whose sole function shall be to conduct such annual study. The size of the committee shall be determined by the Commissioner, or the Mayor, as the case may be, who shall appoint the management members of the committee. Each labor organization or other association or group which has been selected to represent the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia shall select representatives of their respective labor organizations or other association or group to be members of the labor-management committee.

(2) The number of management members and the number of members representing the labor organizations or other associations or groups on the labor-management committee shall be equal. The chairman of the labor management committee shall be chosen by members of the committee, and shall not be an officer or employee of the District of Columbia government or a member or employee of a labor organization or other association or group represented on the committee. If the committee has not chosen a chairman within 10 days after the date of

the first meeting of the committee, then the chairman shall be chosen by the Director of the Federal Mediation and Conciliation Service.

(c) On or before June 30 of each year, the results of the annual study shall be made public and shall be available to the parties involved in negotiations between the District of Columbia and representatives of the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia under the District of Columbia labor relations program. The results of such annual study shall also form the basis for consideration of adjustments in pay levels for officers of the Metropolitan Police force and the Fire Department of the District of Columbia whose compensation is adjusted in a manner which is outside the scope of the negotiations referred to in the first sentence of this subsection. (Sept. 3, 1974, Pub. L. 93-407, title I, § 111, 88 Stat. 1038.)

§ 4-839. Recommendations for salary adjustments—Mediation of labor-management disputes.

(a) If after January 2, 1975, as a result of collective bargaining the parties have reached a negotiated solution with respect to changes in compensation for officers and members of the Police and Fire Departments, the Mayor shall recommend to the Council of the District of Columbia that said changes should be authorized and that the Congress shall be requested to appropriate sufficient funds for that purpose. The first recommendation made by the Mayor under this subsection shall be made by no later than October 1, 1975.

(b) The recommendations submitted by the Mayor under subsection (a) shall be considered a labor-management issue for the purposes of subsection (c).

(c) If the parties have reached an impasse in negotiations on or before the expiration date of their existing collective bargaining agreements, either party shall promptly notify the Director of the Federal Mediation and Conciliation Service in writing. He shall assist in the resolution of that impasse by selecting an impartial person experienced in public sector disputes to serve as a mediator. If mediation does not resolve the impasse within thirty days, or any shorter period designated by the mediator, the Director shall, only upon the request of either party, then appoint an impartial Board of Arbitration to investigate the labor-management issues involved in the dispute, conduct whatever hearing it deems necessary, and to issue a written award to the parties with the object of achieving a prompt, peaceful, and fair settlement of the dispute. The award shall be issued within twenty days after the Board has been established. The award shall contain findings of fact and a statement of reasons. The award shall be final and binding upon the parties to the dispute.

(d) If the procedures set forth in subsection (c) are implemented, no change in the status quo in effect prior to contract expiration date in the case of negotiations for a contract renewal, or in effect prior to the time of impasse in the case of an initial bar-

gaining negotiation, shall be made pending the completion of mediation and/or arbitration.

(e) The factfinder, mediator, and any members of the Board of Arbitration appointed by the Director of the Federal Mediation and Conciliation Service shall be entitled to compensation at the maximum daily rate allowable by law for each day they are actually engaged in performing services under this section. (Sept. 3, 1974, Pub. L. 93-407, title I, § 112, 88 Stat. 1039.)

Chapter 9.—MISCELLANEOUS PROVISIONS

§ 4-901. Memorial fountain to members of Metropolitan Police Department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1X141 and 1-161.

§ 4-904. Establishment of workweek for officers and members of Metropolitan Police, United States Park Police and Executive Protective Service—Definitions—Compensatory time—Overtime pay.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 4-910. Reimbursement of certain tuition expenses of officers and members of the Metropolitan Police Force, Fire Department, Executive Protective Service, and United States Park Police.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

Chap. Sec.
10. Community Development..... 5-1001

Chapter 1.—ALLEY DWELLINGS

Sec.
5-103a. National Capital Housing Authority—Functions and powers of President transferred to Mayor.

§ 5-103. Alley Dwelling Law—Declaration of legislative intent and public policy—Power of President to purchase, condemn, and acquire by gift, land and buildings to prevent alley dwellings, to replat and improve such property, and to make loans for improvements.

TRANSFER OF FUNCTIONS

Functions of the President under this section were transferred to the Commissioner of the District of Columbia by § 5-103a.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 1428 of title 42, U.S. Code.

NOTES TO DECISIONS

Housing regulations

In view of fact that, although trial court held that District of Columbia housing regulation did not apply to public housing accommodations in which tenants lived, it afforded tenants full benefit of principles which were based upon application of housing regulation, the District of Columbia Court of Appeals would not decide whether trial court's ruling was correct because result would be same in either event. *R. L. Coleman et al. v. United States* (D.C. App. 1973, 311 A. 2d 496).

§ 5-103a. National Capital Housing Authority—Functions and powers of President transferred to Mayor.

(a) The National Capital Housing Authority (hereinafter referred to as the "Authority") established under sections 5-103 to 5-116 shall be an agency of the District of Columbia government subject to the organizational and reorganizational powers specified in sections 1-144(b) and 1-162(12).

(b) All functions, powers, and duties of the President under sections 5-103 to 5-116 shall be vested in and exercised by the Mayor. All employees, property (real and personal), and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds, and assets and liabilities of the Authority are authorized to be transferred to the District of Columbia government. (Dec. 24, 1973, Pub. L. 93-198, title II, § 202, 87 Stat. 779.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of the District of Columbia Alley Dwelling Act which comprises §§ 5-103 to 5-116.

EFFECTIVE DATE

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCE

Transfer of personnel, property, and funds, generally, see § 1-131 note.

§ 5-104. Designation of the Authority—Powers—Approval of plans—Condemnation proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TRANSFER OF FUNCTIONS

Functions of the President under this section were transferred to the Commissioner of the District of Columbia by § 5-103a.

ORDER DESIGNATING THE AUTHORITY TO CARRY OUT THE PROVISIONS OF THE DISTRICT OF COLUMBIA ALLEY DWELLING ACT

(Commissioner's Order No. 74-145, June 29, 1974.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967 and Section 202 of the District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93-198; 87 Stat. 774), IT IS HEREBY ORDERED that:

1. The Director of the Office of Housing and Community Development is hereby designated as the Authority to carry out the provisions of the District of Columbia Alley Dwelling Act, as amended (D.C. Code, §§ 5-103 through 5-116). Such Authority shall be deemed a continuation of the Authority designated under Presidential Executive Order No. 6868 of October 9, 1934, as amended.

2. In carrying out his functions as such Authority, the Director of the Office of Housing and Community Development shall be known as the "National Capital Housing Authority."

3. All employees, property, unexpended balances of appropriations, allocations, and all other funds, assets and liabilities of the National Capital Housing Authority, are hereby transferred to the Authority named herein.

4. This Order shall be effective on and after July 1, 1974.

§ 5-105. Appropriation of funds—"Conversion of inhabited alley fund"—Power of the Authority to borrow money—Incidental powers.

(a) The President is hereby authorized, in his discretion, to make immediately available to the Authority for its lawful uses and as needed, from the allocation made from the appropriation to carry out the purposes of the National Industrial Recovery Act, contained in the Fourth Deficiency Act, fiscal year 1933, now carried under the title, "National Industrial Recovery, Federal Emergency Administration of Public Works, Housing, 1933-1935," symbol 03/5666, not to exceed \$500,000 of any amount

thereof dedicated for low-cost housing and slum-clearance projects in the District of Columbia, to be set aside in the treasury and be known as "Conversion of inhabited alleys fund" (hereinafter referred to as the "fund").

(b) The Authority is hereby authorized and empowered to borrow such moneys from individuals or private corporations as may be secured by the property and assets acquired under the provisions of sections 5-103 to 5-116, and such moneys, together with all receipts from sales, leases, or other sources, shall be deposited in the fund and shall be available for the purposes of sections 5-103 to 5-116. The Authority is hereby authorized and empowered to accept gifts of money from private sources; to borrow from the treasury of the United States not to exceed \$1,000,000 in the fiscal year ending June 30, 1939, and a like sum in each of the four succeeding fiscal years, upon such terms and conditions as the President may deem advisable, and appropriations for such purpose are hereby authorized out of the general fund of the treasury: *Provided*, That the Authority shall be obligated for the payment of interest at the going federal rate as defined in the United States Housing Act of 1937.

(c) The fund shall be available annually in such amount as may be specified in the annual appropriation acts.

(d) Repealed. Apr. 4, 1960, 74 Stat. 12, Pub. L. 86-400, § 1.

(e) In carrying out the provisions of sections 5-103 to 5-116, the Authority is hereby authorized and empowered (1) [Repealed. Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b)], (2) to purchase books of reference, directories, and periodicals that are necessary in connection with its work, and (3) to secure architectural and engineering services on specific projects, without regard to the civil service laws: *Provided*, That this authorization shall not apply to the employment of architects and engineers by the Authority on a permanent basis. (June 12, 1934, 48 Stat. 931, ch. 465, § 3; June 25, 1938, 52 Stat. 1187, 1188, ch. 691, §§ 2-4; Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b); Apr. 4, 1960, 74 Stat. 12, Pub. L. 86-400, § 1.)

REFERENCES IN TEXT

The United States Housing Act of 1937, referred to in subsec. (b), is classified to 42 U.S.C. ch. 8.

The "civil service laws", referred to in subsec. (e), are set forth in title 5, U.S.C. See, particularly, § 3301 et seq. of that title.

CODIFICATION

In subsec. (e) (3), the exception from "the Classification Act of 1923, as amended" has been omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949 (63 Stat. 972, 973) repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While § 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exception contained in this section because of § 1106(b) that provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by § 1106(a). The Classification Act of 1949 was repealed by Act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632 (of which § 1 revised and enacted title 5 U.S.C., into law). Section 5102 of title 5, U.S.C., now contains the applicability provisions of the 1949 Act.

AMENDMENTS

1960—Act Apr. 4, 1960, repealed subsec. (d), which prescribed the maximum cost for property in any square.

1946—Act Aug. 2, 1946, repealed provisions in subsec. (e) (1) which read: "to procure services or make any purchase without regard to the provisions of section 3709 of the Revised Statutes, provided the aggregate amount involved is not more than \$100".

1938—Act June 25, 1938, added the last sentence of subsection (b), inserted the phrases "except by condemnation" and changed "present" to "current" in subsection (d) and added subsection (e).

CHANGE OF NAME

For redesignation of Authority, see note under § 5-104.

TRANSFER OF FUNCTIONS

Functions of the President under this section were transferred to the Commissioner of the District of Columbia by § 5-103a.

§ 5-107. The Authority to report to President—Further legislation after July 1, 1944.

TRANSFER OF FUNCTIONS

Functions of the President under this section were transferred to the Commissioner of the District of Columbia by § 5-103a.

§ 5-108. Publication of notice to owners of alley dwellings.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 5-111. Short title.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 1428 of title 42, U.S. Code.

§ 5-114. Authority considered a public housing agency—Federal financial assistance.

NOTES TO DECISIONS

Rent increases

While the National Capital Housing Authority and Department of Housing and Urban Development have discretion to determine the levels and structure of rents and public housing, the agencies must be guided by the general directive that the rents be within the financial reach of families of low income. *C. O. Thompson et al. v. W. Washington, Commissioner etc.* (1973, 497 F. 2d 626, 162 U.S. App. D.C. 39).

Tenants of National Capital Housing Authority low rent public housing were entitled by the National Housing Act to notice of proposed rent increases and to an opportunity to respond in writing before rent increase proposals were forwarded to Department of Housing and Urban Development for approval. *Id.*

Sovereign immunity

The doctrine of sovereign immunity did not bar class action on behalf of tenants of rental units of the National Capital Housing Authority against the Commissioner of District of Columbia and the National Capital Housing Authority for injunctive and declaratory relief with respect to rental increases scheduled by the Authority. *C. O. Thompson et al. v. W. Washington, Commissioner etc.* (1973, 497 F. 2d 626, 162 U.S. App. D.C. 39).

§ 5-116. Loans authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 1428 of title 42, U.S. Code.

Chapter 2.—BUILDING LINES

§ 5-201. Building lines established on streets less than 90 feet wide.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-202. Condemnation proceedings to be instituted.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-204. Permits for extensions of buildings beyond building line.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-205. Existing buildings may project beyond established building line—Commissioner to have control of parkings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—FIRE ESCAPES AND SAFETY PROVISIONS

§ 5-301. Fire escapes required on certain structures—Exceptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-302. Fire escapes—Stairways—Hall and stair lights required on certain structures.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-303. When ten or more persons employed, fire escapes and other safety measures required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-304. Alterations may be required to locate fire escapes or add additional ones.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-308. Penalty for violations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-309. Notice, what to contain.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-310. Notice, when deemed served—Fire escapes and other safety appliances may be provided by Commissioner, when owner neglects—Costs to be lien on property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 5-311. Use of premises may be enjoined if not properly equipped with safety devices.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-313. Upon failure of owner to correct condition violative of law, Commissioner may do so—Cost of correction, lien on property—Owner not relieved from criminal responsibility.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Utilities

Where, in her original and supplemental complaints and motion for preliminary injunction, tenant sought an injunction which would require Commissioner of District of Columbia to provide utilities on a permanent, continuing basis and to make whatever repairs might be necessary to bring three buildings of apartment complex into compliance with housing regulations, but all units in apartment complex were vacated prior to order enjoining Commissioner from taking any action in respect to buildings, and, subsequent thereto, one building was demolished, appeal from denial of motion for preliminary injunction was moot and would be dismissed, and if district court on remand found that remaining two buildings were uninhabitable, barricaded, and scheduled for demolition, it would appear that it should revoke its injunctive order and dismiss action at moot. *A. Massonia et al. v. W. E. Washington et al.* (1973, 476 F. 2d 915, 155 U.S. App. D.C. 159).

§5-314. Authorities permitted to enter property to inspect and correct wrongful conditions—Unlawful to interfere with inspection or correction—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§5-315. Notice to correct wrongful conditions—How given—Methods of service—Required contents.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§5-316. Commissioner of the District of Columbia may prescribe fees for inspection of certain buildings—Schedule of fees to be displayed—Fees deposited in treasury—Hauling permit fees for certain multi-axle motor vehicles.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§5-317. Means of egress and fire safety appliances required in certain public buildings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§5-318. Same—Occupancy prohibited after notice of noncompliance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§5-319. Same—Notice to owner requiring installation—Time for compliance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§5-320. Same—Penalty for noncompliance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§5-321. Service of notice.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§5-322. Same—Construction and installation by Commissioner on owner's noncompliance—Assessment of costs against buildings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§5-323. Same—Injunction against unlawful use or occupation of building.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 4.—ZONING AND HEIGHT OF BUILDINGS

Sec.

5-412. Zoning Commission created—Membership—Functions.

5-417. Public hearings on proposed zoning regulations, maps, and amendments—Notice—Submission to National Capital Planning Commission.

5-426. Appropriations authorized for Zoning Commission—Compensation of members of Zoning Commission and Board of Zoning Adjustment.

§5-404. Additions—Towers, spires, and domes—Theaters.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-405. Width of street to govern height—Business streets—Residence streets—Corner lots—Fire-proof requirements—Dean Tract—Restrictions and limitations applicable to specific property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-147.

§ 5-410. Applications for erection or alteration of buildings fronting on certain government property to be submitted to Commission of Fine Arts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Alteration

Demolition of all but the girders and joists of the hotel structure did not constitute an "alteration" within the meaning of statute requiring property owners in certain section of nation's capital to obtain approval of Fine Arts Commission for the "alteration" of the "height and appearance, color and texture of the materials of exterior construction" of buildings within the protected area. *Commissioner of the District of Columbia et al. v. C. B. Benenson et al.* (D.C. App. 1974, 329 A. 2d 437).

The term "alteration" as used in statute requiring approval of Fine Arts Commission for the "erection or alteration" of any building within the regulated area of the nation's capital means change in the sense of adding to, remodeling or reconstruction. *Id.*

Function of Fine Arts Commission

The function of the Fine Arts Commission under statute requiring its approval for modification of buildings within certain areas of nation's capital is confined essentially to recommendations concerning applications for permits for the "erection or alteration of any building" within the prescribed area so far as the plans therefor relate to "height and appearance, color, and texture of the materials of external construction * * *." *Commissioner of the District of Columbia et al. v. C. B. Benenson et al.* (D.C. App. 1974, 329 A.2d 437).

§ 5-411. Plats of restricted area to be prepared.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-412. Zoning Commission created—Membership—Functions.

(a) To protect the public health, secure the public safety, and to protect property in the District of Columbia there is created a Zoning Commission for the District of Columbia, which shall consist of the Architect of the Capitol, the Director of the National Park Service, and three members appointed by the Mayor, by and with the advice and consent of the Council. Each member appointed by the Mayor shall serve for a term of four years, except of the members first appointed under this section—

(1) one member shall serve for a term of two years, as determined by the Mayor;

(2) one member shall serve for a term of three years, as determined by the Mayor; and

(3) one member shall serve for a term of four years, as determined by the Mayor.

(b) Members of the Zoning Commission appointed by the Mayor shall be entitled to receive compensation as determined by the Mayor, with the approval of a majority of the Council. The remaining members shall serve without additional compensation.

(c) Members of the Zoning Commission appointed by the Mayor may be reappointed. Each member shall serve until his successor has been appointed and qualifies.

(d) The Chairman of the Zoning Commission shall be selected by the members.

(e) The Zoning Commission shall exercise all the powers and perform all the duties with respect to zoning in the District as provided by law. (Mar. 1, 1920, 41 Stat. 500, ch. 92, § 1; Mar. 3, 1921, 41 Stat. 1291, ch. 124; Feb. 26, 1925, 43 Stat. 983, ch. 339; Ex. Ord. No. 6166, June 10, 1933; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1; Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(a), 87 Stat. 810.)

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section generally. For prior provisions, see the 1973 ed. of the Code.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this amendment is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCE

Compensation of members of Zoning Commission, see § 5-426.

§ 5-413. Zoning regulations to be made by Zoning Commission—Uniformity.

CROSS REFERENCE

Recommendations of National Capital Planning Commission, see § 1-1008.

NOTES TO DECISIONS

Advisory opinions

Absence of pending application for redevelopment of apartment complex did not render request for determination of whether requirement of an environmental impact statement would be triggered by redevelopment under either District of Columbia zoning regulations for planned unit developments or provisions for amendment of zoning maps a request for advisory opinion since issues were legal ones involving construction of statutes and regulations and were basically independent of facts surrounding a specific redevelopment proposal, redevelopment would have to occur under one of the two provisions and disposing of matter would avoid subsequent prolonged interference with the administrative process. *McLean Gardens Residents Association, Inc., et al. v. National Capital Planning Commission et al.* (1974, 390 F.Supp. 165).

Board of Zoning Adjustment—Relationship to

Person designated by Zoning Commission to represent Commission on Board of Zoning Adjustment is authorized

to express Zoning Commission's concerns and to cast his vote with full knowledge of attitudes and policy positions of Commission's members, but he is bound to cast his vote with the Board based exclusively upon the record of proceedings before the Board. *Sheridan-Kalorama Neighborhood Council et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 341 A.2d 312).

While channel for communication between Zoning Commission and Board of Zoning Adjustment may become a conduit for pressures external to the Zoning Commission, which abuse might invalidate a Board decision, such communications, if they occur should be made a part of the public record so that interested parties may comment. *Id.*

— Review of decisions

Statutory scheme for processing zoning exceptions was adhered to, and petitioners who sought judicial review of Board of Zoning Adjustment action which granted a special exception were afforded a fair and impartial hearing which satisfied requirements of procedural due process where, *inter alia*, following indication by Board member who was also a member of Zoning Commission, that Commission would review denial of application, one Board member dissented and expressed apprehension that improper pressure had been brought to bear from "upstairs," Commission's order of remand disavowed any intention on Commission's part influence independent decision-making process of Board, and Board's final order was based upon criteria made applicable by zoning regulations. *Sheridan-Kalorama Neighborhood Council et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 341 A.2d 312).

Environmental impact

Although the District of Columbia Zoning Commission and National Capital Planning Commission are not required to prepare an environmental impact statement in connection with applications under the District's zoning regulations for planned unit development or for amendment of zoning maps and zoning regulations, the environmental policies delineated in the National Environmental Policy Act should find expression in the planning and zoning process in the District; proper avenue for implementation of the purposes of the NEPA is in the planning operations of the National Capital Planning Commission, particularly in formulation of the Comprehensive Plan. *McLean Gardens Residents Association, Inc., et al. v. National Capital Planning Commission et al.* (1974, 390 F.Supp. 165).

Where potential environmental effects of decision of Zoning Commission are substantial, it must at least consider the environmental issue to fulfill its public interest mandate. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F.2d 402, 155 U.S. App. D.C. 233).

Inasmuch as District of Columbia Zoning Commission which down-zoned substantial portion of downtown area was not a federal agency, no environmental impact statement was required. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 686).

Ex parte contacts

Contacts of District of Columbia Zoning Commission with federal agencies did not defeat validity of down-zoning order of the Commission on theory that the Commission considered information *ex parte*. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 686).

Hearings

While property rights may not be taken without due process of law, a property owner has no right to a particular zoning classification of his property and thus a hearing upon property owner's proposed zoning map amendment before its denial is not constitutionally required. *W. C. & A. N. Miller Development Company v. District of Columbia Zoning Commission* (D.C. App. 1975, 340 A.2d 420).

Injunctions

Preliminary injunction against enforcement of down-zoning order of District of Columbia Zoning Commission would be denied where issues were novel, likelihood of success on merits appeared slight and there was no affirmative showing of urgent necessity for interference

with major city planning efforts. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 683).

Judicial review

Absent "contested case" status under Administrative Procedure Act (§§ 1-1501 et seq.), Court of Appeals does not have jurisdiction to directly review Zoning Commission's order amending zoning regulations under section 1-1510 relating to review by Court of administrative orders including power to hold unlawful and set aside findings and conclusions in enumerated instances, as that section does not denote a grant of jurisdiction but is a plain statement of scope of judicial review applicable only to contested cases. *Dupont Circle Citizen's Association et al. v. District of Columbia Zoning Commission* (D.C. App. 1975, 343 A.2d 296).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property, the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act (§§ 1-1501 et seq.), with the result that such decision is not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus is subject to review. *W. C. & A. N. Miller Development Company v. District of Columbia Zoning Commission* (D.C. App. 1975, 340 A.2d 420).

In reviewing refusal by Zoning Commission to enact interim amendment to zoning ordinance preventing major construction not in conformance with National Capital Planning Commission's comprehensive recommendations as to development of waterfront area until completion of pending area study, Court of Appeals would consider only whether Commission acted arbitrarily and capriciously, i.e., whether its decision had no substantial relationship to the general welfare. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F.2d 402, 155 U.S. App. D.C. 233).

Actions of Zoning Commission are entitled to presumption of validity; however, the Commission must put forward or the court must be otherwise able to discern some basis in fact and law to justify Commission's action as consistent with reasonableness. *Id.*

Nature of proceedings

Proceedings before District of Columbia Zoning Commission are quasi-legislative in character, not adjudicative in nature, and strictures of the District of Columbia Administrative Procedure Act and full range of due process protections necessary to an adversary adjudication are not applicable. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 686).

Proceedings held under the District of Columbia Zoning Commission's rules of practice, resulting in down-zoning of area, were not a "contested case" within meaning of Administrative Procedure Act, but were adversary in nature and equity could be invoked. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 683).

Reasons for decision

Although the Zoning Commission is a quasi-legislative body and is not required to support its legislative type judgments with findings of fact, there are important elements of a nonlegislative nature to the Commission's decisions; while the legislative character of the Commission's decision may take it outside the strict application of requirement of fact finding, the Commission may still be required to state reasons for its decisions. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F.2d 402, 155 U.S. App. D.C. 233).

Reasons differ from findings in that reasons relate to law, policy, and discretion rather than to facts; thus, even where findings are not required, a disclosure of an agency's reasons is often desirable; requirements of reasons should not be limited to formal proceedings but should extend to all determinations, unless the inconvenience is likely to outweigh the probable benefits. *Id.*

Fact that D.C. Administrative Procedure Act expressly imposes a statement of reasons requirement only in con-

tested cases does not bar imposing a requirement of stated reasons in other contexts; the Act was meant only to prescribe minimum procedures. *Id.*

Decision of District of Columbia Zoning Commission down-zoning a substantial portion of downtown area had a substantial relationship to the general welfare and was supported by adequate reasons. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 686).

If District of Columbia Zoning Commission in down-zoning downtown area acted for reasons not a matter of record, court would be required to find its actions arbitrary. *Id.*

Inasmuch as judicial review of action of District of Columbia zoning commission in down-zoning area of city would be facilitated by a statement of the commission's reasons, court would direct commission to state its reasons for the down-zoning order, and to provide statement of the environmental factors considered persuasive of the action taken. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 683).

Recommendation of Planning Commission

The Zoning Commission, in determining whether to adopt interim amendment to zoning ordinance preventing major construction in waterfront area until completion of study looking toward implementation of National Capital Planning Commission's comprehensive land use plan, was not bound to follow NCPC's recommendation to adopt interim amendment; Zoning Commission was not required to show a compelling public interest before it could override recommendation. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F. 2d 402, 155 U.S. App. D.C. 233).

Review by court

In reviewing action of District of Columbia Zoning Commission, district court is not required to hold a trial de novo nor may it substitute its view of the evidence before the Commission for that of the Commission. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 686).

Court reviewing decision of Zoning Commission has duty to assure that proceedings before the Commission were essentially fair. *Id.*

Fact that plaintiffs claiming that District of Columbia zoning commission acted arbitrarily and illegally in down-zoning area had requested, after suit was filed, that commission state its reasons in form of motion for reconsideration did not defeat jurisdiction to review commission's action where there was no likelihood of favorable action by the commission. *R. Ruppert et al. v. W. E. Washington et al.* (1973, 366 F. Supp. 683).

§ 5-414. Purposes of zoning regulations.

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein. (June 20, 1938, 52 Stat. 797, ch. 534, § 2; Dec. 24, 1973, Pub. L. 93-198, title IV, § 492 (b) (1), 87 Stat. 810.)

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence by striking out "Such regulations shall be made in accordance with a comprehensive plan and" and inserting in lieu thereof "Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital, and zoning regulations shall be".

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this amendment is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

CROSS REFERENCE

Comprehensive plan for National Capital, see § 1-1004.

NOTES TO DECISIONS

Comprehensive plan

Words "comprehensive plan," as used in statutory requirement that zoning regulations adopted by District of Columbia Zoning Commission be in accordance with comprehensive plan does not refer to comprehensive land use plan which the National Capital Planning Commission is charged with preparing by § 1-1004; rather, such requirement refers to the Commission's obligation to zone on a uniform and comprehensive basis. *Citizens Association of Georgetown, Inc. v. Zoning Commission of the District of Columbia* (1973, 477 F. 2d 402, 155 U.S. App. D.C. 233).

Construction

Interpretation of relevant statutes and zoning regulations by the Board of Zoning Adjustment, which, in respect to application for "special exception" to allow the construction of a private school in single-family residential area, refused to consider the purposes set forth in this section as adjudicatory standards in making the "special exception" determination, and which refused to allow the introduction of factual evidence regarding the impact upon public schools in the area, is not plainly erroneous or inconsistent with the statutes or regulations. *Rose Lees Hardy Home and School Association et al. v. District of Columbia Board of Zoning Adjustment et al.* (D.C. App. 1975, 343 A. 2d 564).

§ 5-415. Existing zoning regulations continued until amended—Public hearing on amendments—Notice—Contents.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Hearings

While property rights may not be taken without due process of law, a property owner has no right to a particular zoning classification of his property and thus a hearing upon property owner's proposed zoning map amendment before its denial is not constitutionally required. *W. C. & A. N. Miller Development Company v. District of Columbia Zoning Commission* (D.C. App. 1975, 340 A.2d 420).

Judicial review

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property, the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act (§§ 1-1501 et seq.), with the result that such decision is not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus is subject to review. *W. C. & A. N. Miller Development Company v.*

District of Columbia Zoning Commission (D.C. App. 1975, 340 A.2d 420).

§5-417. Public hearings on proposed zoning regulations, maps, and amendments—Notice—Submission to National Capital Planning Commission.

(a) No zoning regulation or map, or any amendment thereto, may be adopted by the Zoning Commission until the Zoning Commission—

(1) has held a public hearing, after notice, on such proposed regulation, map, or amendment; and

(2) after such public hearing, submitted such proposed regulation, map, or amendment to the National Capital Planning Commission for comment and review.

If the National Capital Planning Commission fails to submit its comments regarding any such regulation, map, or amendment within thirty days after submission of such regulation, map, or amendment to it, then the Zoning Commission may proceed to act upon the proposed regulation, map, or amendment without further comment from the National Capital Planning Commission.

(b) The notice required by clause (1) of subsection (a) shall be published at least thirty days prior to such public hearing and shall include a statement as to the time and place of the hearing and a summary of all changes in existing zoning regulations which would be made by adoption of the proposed regulation, map, or amendment. The Zoning Commission shall give such additional notice as it deems expedient and practicable. All interested persons shall be given a reasonable opportunity to be heard at such public hearing. If the hearing is adjourned from time to time, the time and place of reconvening shall be publicly announced prior to adjournment.

(c) The Zoning Commission shall deposit with the National Capital Planning Commission all zoning regulations, maps, or amendments thereto, adopted by it. (June 20, 1938, 52 Stat. 798, ch. 534, § 5; Dec. 24, 1973, Pub. L. 93-198, title IV, § 492(b) (2), 87 Stat. 810.)

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section generally. For prior provisions, see the 1973 ed. of the Code.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this amendment is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

TRANSFER OF FUNCTIONS

Section 712 of Act Dec. 24, 1973, Pub. L. 93-198 [set out as § 1-132], provided in part that "[no] function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the . . . Zoning Advisory Council, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act [§ 1-144(a)]. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting."

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1008.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 71g of title 40, United States Code.

NOTES TO DECISIONS

Environmental impact

Although the District of Columbia Zoning Commission and National Capital Planning Commission are not required to prepare an environmental impact statement in connection with applications under the District's zoning regulations for planned unit development or for amendment of zoning maps and zoning regulations, the environmental policies delineated in the National Environmental Policy Act should find expression in the planning and zoning process in the District; proper avenue for implementation of the purposes of the NEPA is in the planning operations of the National Capital Planning Commission, particularly in formulation of the Comprehensive Plan. *McLean Gardens Residents Association, Inc., et al. v. National Capital Planning Commission et al.* (1974, 390 F. Supp. 165).

§5-418a. Continued use and maintenance of existing chanceries—Construction, reconstruction, expansion or alterations in accordance with permits issued on or before February 18, 1964.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§5-420. Board of Zoning Adjustment—Creation, membership—Tenure—Regulations to govern organization and procedure—Appeal—Procedure, powers—Majority vote necessary.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TRANSFER OF FUNCTIONS

Section 712 of Act Dec. 24, 1973, Pub. L. 93-198 [set out as § 1-132], provided in part that "[no] function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the . . . Board of Zoning Adjustment, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act [§ 1-144(a)]. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting."

NOTES TO DECISIONS

Administrative procedure

Although Board of Zoning Adjustment may not have been required to consider impact on existing public and private schools in passing on request by religious organization for special exception to allow construction of private school for kindergarten and elementary school age children in residential area the Board committed

procedural error, requiring remand, in not implementing its preliminary decision to seek "comments" from Board of Education respecting possible adverse impact on existing schools and in relying on information contained in letter from Superintendent of Schools as to such impact without serving such letter on the parties. *Rose Lees Hardy Home and School Association et ano. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 324 A. 2d 701).

Arbitrary or capricious

Board of Zoning Adjustment, being a creature of statute with discretionary and fact-finding authority, may not exercise its discretion in an arbitrary manner but rather is subject to statutory and regulatory directives and guidelines. *Rose Lees Hardy Home and School Association et ano. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 324 A. 2d 701).

Construction

Interpretation of relevant statutes and zoning regulations by the Board of Zoning Adjustment, which, in respect to application for "special exception" to allow the construction of a private school in single-family residential area, refused to consider the purposes set forth in section 5-414 as adjudicatory standards in making the "special exception" determination, and which refused to allow the introduction of factual evidence regarding the impact upon public schools in the area, is not plainly erroneous or inconsistent with the statutes or regulations. *Rose Lees Hardy Home and School Association et al. v. District of Columbia Board of Zoning Adjustment et al.* (D.C. App. 1975, 343 A. 2d 564).

Construction of zoning regulations

When Court of Appeals reviews Zoning Board's construction of regulations adopted by Zoning Commission, Board's interpretation is controlling, unless it is plainly erroneous or inconsistent with regulation. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 282).

With respect to zoning regulation requiring for high school and accessory uses two parking spaces for each three teachers plus one for each 20 classroom seats "OR" one for each ten auditorium seats whichever is greater, it was reasonable for Board of Zoning Adjustment to consider "OR" as dividing line between alternatives so that number of parking spaces required was either "two for each three teachers plus one for each 20 classroom seats" or "one for each ten auditorium seats," whichever alternative was greater. *Id.*

Board of Zoning Adjustment's construction of Zoning Commission's regulations to include high school gymnasium within high school and accessory use provision of regulations for purposes of determining number of parking spaces required rather than as a place of public assemblage was not plainly erroneous or inconsistent with regulations. *Id.*

Decision

Decision of Board of Zoning Adjustment on application for special exception must not be controlled by head count as in a political election, but by evidence adduced as it relates to requirements for special exception. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 282).

Ex parte contacts

Person designated by Zoning Commission to represent Commission on Board of Zoning Adjustment is authorized to express Zoning Commission's concerns and to cast his vote with full knowledge of attitudes and policy positions of Commission's members, but he is bound to cast his vote with the Board based exclusively upon the record of proceedings before the Board. *Sheridan-Kalorama Neighborhood Council et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 341 A. 2d 312).

While channel for communication between Zoning Commission and Board of Zoning Adjustment may become a conduit for pressures external to the Zoning Commission, which abuse might invalidate a Board decision, such communications, if they occur should be made a part of the public record so that interested parties may comment. *Id.*

Where neighboring property owner, who objected to application for special exception to zoning plan, addressed ex parte letter on merits of controversy to member of Board of Zoning Adjustment the member, instead of sending an ex parte reply to the property owner, should have placed his improper submission in the public record and had copies thereof served on the other parties, notwithstanding fact that record technically was closed and the case had been decided. *Rose Lees Hardy Home and School Association et ano. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 324 A. 2d 701).

Exception

Applicants for special exceptions to permit the construction and use of an office building in a special purpose district failed to meet their required burden to obtain a special exception. *E. A. Shay et al. v. District of Columbia, Board of Zoning Adjustment* (D.C. App. 1975, 337 A. 2d 506).

Board of Zoning Adjustment may exercise its discretion to grant a special exception only when in its judgment the exception sought is in accord with the purpose of the zoning regulations. *Rose Lees Hardy Home and School Association et ano. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 324 A. 2d 701).

— Community center

Where proposed facility was to be located on property zoned residential, was to house indoor tennis, squash, handball, sauna baths and indoor swimming and was not to be open to members of the community at large, but was to be operated as a club with use limited to members and their guests, and where memberships offered would be limited in number, the proposed facility was a private club and not a "community center" facility operated by a local "community organization" within zoning ordinance authorizing granting of special exception for such a community facility. *D. C. Stewart et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 305 A. 2d 516).

— Private school

Interpretation of relevant statutes and zoning regulations by the Board of Zoning Adjustment, which, in respect to application for "special exception" to allow the construction of a private school in single-family residential area, refused to consider the purposes set forth in section 5-414 as adjudicatory standards in making the "special exception" determination, and which refused to allow the introduction of factual evidence regarding the impact upon public schools in the area, is not plainly erroneous or inconsistent with the statutes or regulations. *Rose Lees Hardy Home and School Association et al. v. District of Columbia Board of Zoning Adjustment et al.* (D.C. App. 1975, 343 A. 2d 564).

Evidence established that requirements had been met for special exception to permit private high school to be located in building situated in median density apartment house zone. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 282).

Findings of fact

Order of Zoning Board of Adjustment reversing grant to property owner of building permit to construct a sun deck at rear of his home would have to be reversed, and the case remanded, where Board made no findings whatever concerning issue raised by owner, who asserted that because of seven-month delay between issuance of permit and filing of appeal with the Board five months after deck was completed, because of lack of complaints by neighbors while construction was in progress, and because of good-faith reliance by owner on building permit issued, zoning appeal should be dismissed on ground of laches and estoppel. *S. A. Smith et ux. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 342 A. 2d 356).

Board of Zoning Adjustment's findings of fact which were devoid of any delineation of factors weighed in reaching its conclusions of law thereby precluding determination on review as to which factors or considerations influenced Board's decision are inadequate and require remand

to Board for proper entry of findings of fact and conclusions of law. *E. A. Shay et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 334 A.2d 175).

Findings of Board of Zoning Adjustment in denying application for variance from a C-1 (neighborhood shopping) nonconforming use to a C-2 (community business center) use were insufficient for reviewing court to discern the necessary rational basis for the decision. *L. Salsbery v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 318 A.2d 894).

Consideration by Board of Zoning Adjustment of costs of converting to residential use building for which petitioner sought variance from a C-1 conforming use to a C-2 use did not obviate necessity for findings required by zoning statute. *Id.*

In action by college for review of order of Board of Zoning Adjustment denying application for amendment to campus plan to allow college to offer short-term, continuing education type courses on year-around basis, evidence sustained findings of the Board that new programs would introduce large number of transient men and women onto college property, substantially increase number of people entering or leaving neighborhood, usually in automobiles, adversely affect use of neighboring property in residential zone and cause continuing instability and alarm in community because of uncertainty about nature of uses which could be anticipated. *Marjorie Webster Junior College, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 309 A. 2d 314).

Hardship

There was rational basis for conclusion of District of Columbia Board of Zoning Adjustment that owner of building in residential area had failed to make the required showing of hardship to warrant a variance to permit use of property for general office purposes. *M. Dwyer v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 306).

Under zoning statute, grant of variance on basis of hardship was not restricted to case where required hardship inheres in "land" as opposed to "property." *Clerics of Saint Viator, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 291).

Owner of seminary was not precluded on application for variance from claiming hardship on theory that any hardship was self-imposed, where it was not building of structure which gave rise to complained-of hardship but hardship was caused by extraordinary drop in enrollment of seminarians due solely to historical circumstances and beyond control of seminary administration. *Id.*

On application for variance to convert seminary to nursing home on claim of hardship, necessary element of proof of hardship was evidence showing inability of applicant to make a reasonable disposition of property for a permitted use. *Id.*

Application of zoning regulation which allowed only detached single family homes with minimum lot dimensions of 50 feet in width and 5,000 total square feet to property which was shallow and had extreme topography and was in close proximity to small district of neighborhood shopping and a general residence district did not result in an undue hardship upon landowner warranting the granting of variance to build 27 row houses of just over 2,000 square feet. *W. W. Taylor v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 308 A. 2d 230).

Shallowness of lots was a self-imposed hardship which was entitled to only slight weight, if any, in determining uniqueness of hardship to justify granting of variance in zoning. *Id.*

Powers

Sole authority for any amendment of zoning regulations relating to parking is in Zoning Commission, not Board of Zoning Adjustment. *Citizens Association of Georgetown, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 337 A.2d 495).

Board of Zoning Adjustment is without direct or indirect power to amend a zoning map and regulations. *W. W. Taylor v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 308 A. 2d 230).

Precedents

While Board of Zoning Adjustment is not bound for all time by its prior positions, Board should have considered, not only in connection with Board's decision on the merits of the case but also as it related to owner's claim of estoppel, contention of property owner that zoning administrator's approval of construction of sun deck was given pursuant to a long-standing interpretation of zoning regulations which had been approved in the past by the Board. *S. A. Smith et ux. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 342 A.2d 356).

Reasons for decision

Order of Zoning Board of Adjustment which reversed grant to property owner of building permit to construct a sun deck at the rear of his property improperly fails to articulate the relationship between the Board's findings of fact and conclusions of law, which is a responsibility of the Board, where the facts were stated and where the ultimate conclusion followed, but where the Court of Appeals cannot determine from the order the manner in which the Board construed its regulations in arriving at its conclusion that "the structure" violated the zoning regulations. *S. A. Smith, et ux. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 342 A.2d 356).

Where Board of Zoning Adjustment's reasons for denying area variance merely quoted pertinent standards in subsection of code without explaining how proposed variance would violate such standards, except for one terse sentence dealing with property owner's alleged self-imposition of hardship, Board's conclusions and findings are insufficient. *A. L. W., Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 338 A.2d 428).

Review by court

Failure of chairman and a member of Board of Zoning Adjustment to recuse themselves, in respect to application for a "special exception" to allow the construction of a private school in a residential area, is waived by the failure of those opposing the application to timely raise that issue at the administrative level and at the earlier review proceeding in the Court of Appeals, irrespective of the fact that the recusal issue was listed in the petition for review in the first Court of Appeals proceeding. *Rose Lees Hardy Home and School Association et al. v. District of Columbia Board of Zoning Adjustment et al.* (D.C. App. 1975, 343 A. 2d 564).

On review of order of Board of Zoning Adjustment, Court of Appeals must determine whether findings made are supported and in accordance with reliable, probative and substantial evidence in the whole administrative record and whether conclusions of Board flow rationally from these findings. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A. 2d 282).

Scope of review of decision of Board of Zoning Adjustment which denied variance would not permit court to grant variance sought; the proper disposition because of insufficient findings was remand. *L. Salsbery v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 318 A. 2d 894).

In reviewing order of Board of Zoning Adjustment denying college's application for amendment to its campus plan to allow college to offer short-term, continuing education type courses on a year-around basis on its campus located in residential zone, court must determine whether detailed findings of the Board were made upon each material contested issue of fact, whether those findings were supported by and in accordance with reliable, probative and substantial evidence in the whole of the administrative record and whether conclusions of the Board flowed rationally from those findings. *Marjorie Webster Junior College, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 309 A. 2d 314).

Review by Court of Appeals of decision of Board of Zoning Adjustment is limited to a determination of whether the decision reached follows as a matter of law from facts stated as its basis, and also whether facts so stated have any substantial support in the evidence; if Board's decision follows from its findings and those findings are supported by substantial evidence, Court of Appeals must affirm even though it might have reached an-

other result. *D. C. Stewart et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 305 A. 2d 516).

Review by Zoning Commission

Statutory scheme for processing zoning exceptions was adhered to and petitioners who sought judicial review of Board of Zoning Adjustment action which granted a special exception were afforded a fair and impartial hearing which satisfied requirements of procedural due process where, inter alia, following indication by Board member who was also a member of Zoning Commission, that Commission would review denial of application, one Board member dissented and expressed apprehension that improper pressure had been brought to bear from "upstairs," Commission's order of remand disavowed any intention on Commission's part influence independent decision-making process of Board, and Board's final order was based upon criteria made applicable by zoning regulations. *Sheridan-Kalorama Neighborhood Council et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 341 A.2d 312).

Review of unfair hearing

Since two petitioners who sought judicial review of Board of Zoning Adjustment's action granting a special exception communicated to Zoning Commission their dissatisfaction with Board's action almost simultaneously with Commission's decision to review such action, petitioners are not in a position to claim prejudice as a result of fact that Commission assumed both the authority to review the matter, regardless of whether any party appealed, and the authority to remand. *Sheridan-Kalorama Neighborhood Council et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 341 A.2d 312).

Scope of review

On review of decision of Board of Zoning Adjustment, Court of Appeals could not consider new issues raised by petitioners concerning parking requirements with respect to operation of private high school but would look to the exclusive record or portions of it designated by parties. *N. K. Dietrich et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A.2d 282).

Variance

"Variance" is an authorization to a property owner to depart from literal requirements of zoning regulations in utilization of his property in cases in which strict enforcement of the zoning regulations would cause undue hardship. *C. Daniel et al. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 329 A. 2d 773).

Neighborhood detriment, as such, is not a criterion under zoning statute authorizing variance where strict application of regulation would result in exceptional and undue hardship upon owner. *L. Salsbery v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 318 A.2d 894).

Where board of zoning adjustment ruled against petitioner on hardship claim on basis of which variance from C-1 nonconforming use to a C-2 use was sought, board should not have reached consideration of statutory proviso whether the intended use would have an adverse effect upon the character and development of the neighborhood and would substantially impair the purpose, intent or integrity of the zoning regulations and maps. *Id.*

Even though landowner seeking variance from zoning which allowed only detached single family houses with minimum lot dimensions of 50 feet in width and 5,000 total square feet wished to build single-family dwellings on land, where requested variance would allow construction of 27 row houses on lots of approximately 2,000 square feet and allow landowner to almost triple family density allowed under zoning and row houses would not be in character with other properties in zoned district, requested variance was not an area variance but a use-area variance; thus, landowner was properly required to prove undue hardship in order to be entitled to variance. *W. W. Taylor v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1973, 308 A. 2d 230).

Board of zoning adjustment does not have authority to grant a variance in order to assure landowner a profit. *Id.*

— Use

Applicant seeking use variance must show "exceptional and undue hardship", but where substandard lot is subject of application for area variance, proof of only "peculiar and exceptional difficulties" is involved. *A. L. W., Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1975, 338 A.2d 428).

Landowner seeking area variance for substandard lot is required only to prove "peculiar and exceptional difficulties" even though he knew or should have known of area restrictions before he purchased property. *Id.*

On application for variance to convert seminary to nursing home, it would be proper for zoning board to require applicant to present evidence to show that his proposed use would not create traffic flow and parking problems inconsistent with R-1-B residential neighborhood, and board must give applicant sufficient notice of issues on which it seeks proof. *Clerics of Saint Viator, Inc. v. District of Columbia Board of Zoning Adjustment* (D.C. App. 1974, 320 A.2d 291).

§5-421. Maps and regulations of Zoning Commission—To be filed—Published.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§5-423. Enforcement of regulations—Power to adopt municipal regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§5-426. Appropriations authorized for Zoning Commission—Compensation of members of Zoning Commission and Board of Zoning Adjustment.

Appropriations are hereby authorized to carry out the provisions of sections 5-413 to 5-428 for the fiscal year ending June 30, 1938, and thereafter the Mayor of the District of Columbia is authorized and directed to include in his annual estimates such amounts as may be required for salaries and expenses incident to such purposes. Each member of the Zoning Commission and of the Board of Zoning Adjustment shall be entitled to receive compensation, according to regulations of the Mayor of the District of Columbia, of \$100 for each day actually spent performing the duties of such a member. No compensation, however, shall be paid to any such member who is also an officer or employee of the United States or of the District of Columbia government. (June 20, 1938, 52 Stat. 802, ch. 534, § 14; May 13, 1975, D.C. Law 1-1, § 1, 21 DCR 3938.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act May 13, 1975, D.C. Law 1-1, amended the second and third sentences generally. The amendment provided new rates of compensation for members of the Zoning Commission and Board of Zoning Adjustment.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2 of Act May 13, 1975, D.C. Law 1-1, provided: "The Act [amending § 5-426] shall take effect upon becoming law by operation of the District of Columbia Self-Government and Government Reorganization Act and upon becoming law, Sec. 1 of this Act shall be applied retroactively to February 5, 1975."

SHORT TITLE

Section 3 of Act May 13, 1975, D.C. Law 1-1, provided: "This act [amending § 5-426] may be cited as the 'Zoning Commission and Board of Zoning Adjustment Compensation Act'."

§ 5-429. Commissioner of the District of Columbia to prescribe fees for permits, certificates, and transcripts by inspector of buildings—Schedule of fees to be displayed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—UNSAFE STRUCTURES

§ 5-501. Structure reported unsafe, to be examined by Commissioner—If unsafe, notice to be given to make same secure—If safety requires, Commissioner may make secure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-502. If dangers not remedied, premises to be surveyed by three disinterested persons—Report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-503. Commissioner to make structure safe if responsible person does not—Owners or other interested persons not to interfere with Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-504. Nuisances to be abated—Notice given—Cost a lien on property—Penalty—Prosecution.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Abandoned vehicle

Where defendant removed automobiles, which either had valid license tags or were virtually undamaged and could not therefore have reasonably been regarded as abandoned, from parking lot under authorization by property managers, who did not have authority to contract with defendant for removal of such vehicles, defendant had no right to tow away such automobiles and thus was properly found guilty of taking property without right. *L. R. Fogle, Sr. v. United States* (D.C. App. 1975, 336 A.2d 833).

§ 5-505. Costs and expenses of removing nuisances to be determined by Commissioner and assessed against the property—Penalty for violation of sections 5-501 to 5-503.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-508. Structures found to be unsafe—Notice to owners and occupants—Use of unsafe structures may be prohibited—Penalty for violation of Commissioner's order.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—INSANITARY BUILDINGS

§ 5-616. Inspection by Commissioner—Condemnation—Delegation of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-617. Board for the Condemnation of Insanitary Buildings—Condemnation Review Board—Members—Procedure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-618. Condemnation procedure—Notice—Order—Remedial action by owner—Occupancy of condemned buildings.

NOTES TO DECISIONS

Constitutional rights

Demolition of property pursuant to an order of Board for Condemnation of Insanitary Buildings following a determination that property should be condemned because

of its insanitary condition was only incident to a legitimate exercise of governmental power and not a direct appropriation which would bring Fifth Amendment considerations into play. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

Hearing

Record failed to establish truth of claim that owners of condemned premises were denied a fair hearing before Condemnation Review Board on motion to stay demolition of property. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

§ 5-620. Repairs or changes—Demolition—District of Columbia Building Code.

NOTES TO DECISIONS

Constitutional rights

Demolition of property pursuant to an order of Board for Condemnation of Insanitary Buildings following a determination that property should be condemned because of its insanitary condition was only incidental to a legitimate exercise of governmental power and not a direct appropriation which would bring Fifth Amendment considerations into play. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

§ 5-622. Owner's failure to comply with order—Repair or demolition by Board for the Condemnation of Insanitary Buildings—Payment of costs—Effect of appeal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Damages

Invocation of replacement cost as measure of damage to owner of buildings demolished by District of Columbia without according owner the notice required by due process is not clearly erroneous. *A. E. Miles v. District of Columbia et ano.* (1975, 510 F.2d 188, 166 U.S. App. D.C. 235; aff'g 354 F. Supp. 577).

Hearing

Failure of board to provide property owner with a hearing in 1969 before ordering demolition of her property was a failure to grant a hearing at a meaningful time and in a meaningful manner and board's order constituted a deprivation of owner's property and a denial of her right to repair in violation of due process even though board had granted owner a hearing six years prior to entry of 1969 order. *A. E. Miles v. District of Columbia et ano.* (1973, 354 F. Supp. 577; aff'd 510 F. 2d 188, 166 U.S. App. D.C. 235).

Although local governments have an interest in the economic and expeditious resolution of questions involving disposition of insanitary buildings, nevertheless, where governmental action seriously injures an individual or compromises his property rights, and reasonableness of the action depends on fact-findings, due process requires no less than a timely hearing, weighing of evidence and at least a brief summary of the facts and rationale which sustain the final administrative decision. *Id.*

§ 5-623. Litigation involving title to property—Notice—Report to Commissioner—Court order.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-624. Infant owner—Person non compos mentis—Appointment of guardian.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-625. Notice—Service.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Damages

Invocation of replacement cost as measure of damage to owner of buildings demolished by District of Columbia without according owner the notice required by due process is not clearly erroneous. *A. E. Miles v. District of Columbia et ano.* (1975, 510 F.2d 188, 166 U.S. App. D.C. 235; aff'g 354 F. Supp. 577).

Due process

Where, since original service six years before order was entered for demolition of owner's buildings, owner expended a substantial sum of money to repair and improve the buildings, and condition of the buildings materially changed, due process required no less than registered or certified mail notice of board's subsequent decision to demolish, affording owner opportunity to register her objections. *A. E. Miles v. District of Columbia et ano.* (1973, 354 F. Supp. 577; aff'd 510 F. 2d 188, 166 U.S. App. D.C. 235).

Publication in a newspaper of notice as to proposed demolition of certain property did not meet due process requirements where it did not mention property owner by name, but only listed properties by address in a group notice which included other properties. *Id.*

Service on agent

Where service of notice to show cause why premises should not be condemned because of insanitary conditions and of condemnation order upon rental agent for premises was in accordance with statute and consistent with decided agency law, defective service as against owner of premises was not established. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

§ 5-626. Interference with work or inspection.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-628. Review of order—Application to Condemnation Review Board—Fee.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Review procedures

Statutory procedures established by Congress for review of a condemnation order made by Board for Condemnation of Insanitary Buildings are exclusive. *J. J. Urciolo et*

ano. v. W. E. Washington et al. (D.C. App. 1973, 305 A. 2d 252).

§ 5-629. Appeal from order—Superior Court—Modification or vacation by court.

NOTES TO DECISIONS

Review procedures

Statutory procedures established by Congress for review of a condemnation order made by Board for Condemnation of Insanitary Buildings are exclusive. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

Scope of review

Where owners of premises failed to exercise their right to appeal condemnation order either to Condemnation Review Board or to Superior Court, question whether property was in fact in an insanitary condition when condemned was precluded and could not serve to confer jurisdiction on court in action wherein owners sought a temporary restraining order against demolition of property. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

§ 5-633. Definitions—"Commissioner"—"Owner".

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Service on agent

Where service of notice to show cause why premises should not be condemned because of insanitary conditions and of condemnation order upon rental agent for premises was in accordance with statute and consistent with decided agency law, defective service as against owner of premises was not established. *J. J. Urciolo et ano. v. W. E. Washington et al.* (D.C. App. 1973, 305 A. 2d 252).

§ 5-634. Suits and proceedings under prior law—Time limits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—HOUSING REDEVELOPMENT

§ 5-702. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-703. Establishment and powers of the Agency.

(a) The District of Columbia Redevelopment Land Agency is hereby established as an instrumentality of the District of Columbia government, and shall be composed of five members appointed by the Mayor of the District of Columbia (hereinafter referred to as the "Mayor"), with the advice and consent of the Council of the District of Columbia (hereinafter referred to as the "Council"). The Mayor shall name one member as chairman. No more than two members may be officers of the District of Columbia gov-

ernment. Each member shall serve for a term of five years except that of the members first appointed under this section, one shall serve for a term of one year, one shall serve for a term of two years, one shall serve for a term of three years, one shall serve for a term of four years, and one shall serve for a term of five years, as designated by the Mayor. The terms of the members first appointed under this section shall begin on or after January 2, 1975. Should any member who is an officer of the District of Columbia government cease to be such an officer, then his term as a member shall end on the day he ceases to be such an officer. Any person appointed to fill a vacancy in the Agency shall be appointed to serve for the remainder of the term during which such vacancy arose. Any member who holds no other salaried public position shall receive compensation at the rate of \$100 for each day such member is engaged in the actual performance of duties vested in the agency.

(b) The said District of Columbia Redevelopment Agency is hereby made a body corporate of perpetual duration, the powers of which shall be vested in and exercised by the board of directors thereof, consisting of the five members thereof appointed as above set forth, except that nothing in this section shall prohibit the District of Columbia government from dissolving the corporation, eliminating the board of directors, or taking such other action with respect to the powers and duties of such Agency, including those actions specified in subsection (c), as is deemed necessary and appropriate. It shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; to make contracts; to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction, State, Federal, or municipal; to make, deliver, and receive deeds, leases, and other instruments and to take title to real and other property in its own name; to adopt, prescribe, amend, repeal, and enforce by-laws, rules, and regulations for the exercise of its powers under sections 5-701 to 5-719 or governing the manner in which its business may be conducted and the powers granted to it by sections 5-701 to 5-719 may be exercised and enjoyed, including the selection of officers other than its chairman, together with provisions for such committees and the functions thereof as it may deem necessary for facilitation of its work; to protect and enforce any right conferred upon it by sections 5-701 to 5-719, or otherwise acquired, including any lease, sale, or other agreement made by or with it; and in general to exercise all the powers necessary or proper to the performance of its duties and functions under sections 5-701 to 5-719.

(c) The Council is authorized, by act, to adopt legislation—

(1) establishing, for the purpose of assuring uniform procedures relating to the disposition of complaints and other claims involving the Redevelopment Land Agency (or its successor) and other administrative units of the District of Columbia government, a factfinding board to receive, hear, and act on such complaints and claims arising out of or in connection with administrative and other actions of such Agency or units in carrying out their powers and functions;

(2) providing that all planning, designing, construction, and supervision of public facilities which are to be contributed to any redevelopment area as the local non-cash grant-in-aid to the project under title I of the Housing Act of 1949, shall, to the extent practicable, be carried out by an appropriate District of Columbia department or agency on the basis of a contractual or other arrangement with the Redevelopment Land Agency or its successor;

(3) providing that any occupied rental property owned by the Agency shall be maintained by such Agency (or its successor) in a safe and sanitary condition; or

(4) providing that the Mayor shall have authority to waive all or any part of any special assessments levied against abutting property owners for the cost of sewers, streets, curbs, gutters, sidewalks, utilities, and other supporting facilities or project improvements where the costs therefor to the District of Columbia can be applied as a non-cash local grant-in-aid, as defined by the Secretary of the Department of Housing and Urban Development.

(Aug. 2, 1946, 60 Stat. 793, ch. 736, § 4; Dec. 24, 1973, Pub. L. 93-198, title II, § 201(a)-(c), 87 Stat. 778.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCES IN TEXT

Title I of the Housing Act of 1949, as amended, referred to in subsec. (c) (2), is classified to 42 U.S.C. § 1450 et seq.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section as follows:

Subsec. (a) amended generally by § 201(a) of said Act.

Subsec. (b) amended by § 201(b) of said Act by (1) inserting the exception at the end of the first sentence, and (2) substituting "officers other than its chairman" for "its chairman and other officers" in the second sentence.

Subsec. (c) added by § 201(c) of said Act.

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

CONSTRUCTION OF 1973 AMENDMENT

Section 201(e) of Act Dec. 24, 1973, Pub. L. 93-198, provided: "None of the amendments [to §§ 5-703, 5-704] contained in this section shall be construed to affect the eligibility of the District of Columbia Redevelopment Land Agency to continue participation in the small business procurement programs under section 8(a) of the Small Business Act (67 Stat. 547)."

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

NOTES TO DECISIONS

Status of Agency

For the purposes of the Uniform Relocation Assistance Act, the District of Columbia Redevelopment Land Agency is a "state agency" rather than a "federal agency." *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

Fact that Redevelopment Land Agency was a "state agency" rather than a "federal agency" for the purposes of the Uniform Relocation Assistance Act did not preclude federal court from granting preliminary relief

against the land agency with respect to the displacement of any resident of an area undergoing redevelopment. *Id.*

§ 5-704. Power to acquire and assemble real property—Public utility relocation expenses.

* * * * *

(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with subchapter II of chapter 13 of title 16. The title to properties acquired under sections 5-701 to 5-719 shall be taken by and in the name of the Agency and proceedings for condemnation or other acquisition of property shall be brought by and in the name of the agency.

* * * * *

(As amended Dec. 24, 1973, Pub. L. 93-198, title II, § 201(d), 87 Stat. 779.)

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence of subsec. (b) by substituting "subchapter II of chapter 13 of title 16" for "the procedural provisions of chapter 13 of title 16".

EFFECTIVE DATE OF 1973 AMENDMENT

See sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

CONSTRUCTION OF 1973 AMENDMENT

See note under § 5-703.

NOTES TO DECISIONS

Housing Code

Where District of Columbia Redevelopment Land Agency maintained properties acquired by it as residences only temporarily until relocation housing for residents becomes available and redevelopment or rehabilitation could be undertaken, the District of Columbia Housing Code was not directly applicable to the agency's temporary residential properties. *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

§ 5-705. General and project area redevelopment plans—Shaw Junior High School.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Abuse of discretion

District court did not abuse its discretion by its determination that requiring the District of Columbia Redevelopment Land Agency and the National Capital Planning Commission to repeat the complex neighborhood development program approval process in a manner that comported fully with the National Environmental Protection Agency Act would not better serve Environmental Protection Acts purposes than the remedial actions taken by the agencies. *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

Environmental impact

As part of the approval process for neighborhood development program for the District of Columbia, the National Environmental Protection Act requires that the National Capital Planning Commission prepare a draft environmental impact statement concerning each action year program for submission to city council and to Department of Housing and Urban Development, that the Redevelopment Land Agency prepare a draft impact statement for submission to the Planning Commission and that the Department of Housing and Urban Development prepare and issue final environmental impact statement. *D. Jones et al. v. District of Columbia*

Redevelopment Land Agency et al. (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

Injunctions

The Court of Appeals would not disturb the order the district court which denied and dissolved preliminary injunctions with respect to urban renewal plan in the District of Columbia except for abuse of discretion or clear error and would not consider the merits of the case further than necessary to determine whether that discretion had been abused. *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

The imminence of physical steps to carry out action year program for neighborhood development program was not indispensable condition to preliminary injunction to require District of Columbia Redevelopment Land Agency to prepare an environmental impact statement for submission to the National Capital Planning Commission or for that agency to prepare a draft impact statement for submission to Department of Housing and Urban Development. *Id.*

Before issuing order staying for 60 days order preliminary enjoining any action pursuant to certain action year programs for neighborhood development programs pending filing of environmental impact statement, it was necessary that the district court engage in particularized analysis so as to stay the injunction only as to those elements of the project delay of which would demonstrably result in injustice or substantial public harm. *Id.*

§ 5-706. Transfer, lease, or sale of real property in project area for public and private uses.

NOTES TO DECISIONS

Housing Code

Where District of Columbia Redevelopment Land Agency maintained properties acquired by it as residences only temporarily until relocation housing for residents becomes available and redevelopment or rehabilitation could be undertaken, the District of Columbia Housing Code was not directly applicable to the agency's temporary residential properties. *D. Jones et al. v. District of Columbia Redevelopment Land Agency et al.* (1974, 499 F. 2d 502, 163 U.S. App. D.C. 366).

§ 5-707. Housing for displaced families.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-711. Modification of redevelopment plans.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-713. Administrative expenditure and employment.

The Agency is hereby authorized and empowered—

(a) Repealed. Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b);

(b) to secure planning, land economics and valuation services, and other expert services related to the acquisition and disposition of real property, by contract or otherwise, at rates of pay or fees not to exceed those usual for similar services elsewhere, and without regard to section 1-808: *Provided*, That this exemption shall not apply to persons employed by the Agency on a permanent basis;

(c) to appoint and employ such officers and employees as it may find necessary for the proper performance of its duties under sections 5-701 to 5-719 and to prescribe their authorities, duties, responsibilities, and tenures and fix their compensations; such appointments and employments to be made in conformance with the civil-service laws and chapter 51 and subchapter III of chapter 53, title 5, U.S. Code [relating to the classification of government employees and related matters]; and

(d) to make such expenditures, subject to audit under the general law, for the acquisition and maintenance of adequate vehicles, furnishings, equipment, supplies, books of reference, directories, periodicals, newspapers, printing and binding, and for such other expenses as may from time to time be found necessary for the proper administration of sections 5-701 to 5-719. (Aug. 2, 1946, 60 Stat. 799, ch. 736, § 14; Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b); Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

REFERENCES IN TEXT

The "civil-service laws", referred to in this section, are set forth in title 5, U.S.C. See, particularly, § 3301 et seq. of that title.

CODIFICATION

In subsec. (b), the exception from "the Classification Act of 1923, as amended" has been omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949 (63 Stat. 972, 973) repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While § 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exception contained in this section because of § 1106(b) that provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by § 1106(a). The Classification Act of 1949 was repealed by Act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632 (of which § 1 revised and enacted title 5, U.S.C., into law). Section 5102 of title 5, U.S.C., now contains the applicability provisions of the 1949 Act.

In subsec. (c), the reference to "chapter 51 and subchapter III of chapter 53 of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949" and "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89-554, set out in note under § 1-251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782), was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENTS

1949—Subsection (c), Act Oct. 28, 1949, § 1106(a), which was a part of the Classification Act of 1949, and which has since been repealed, substituted "Classification Act of 1949" for "Classification Act of 1923". See codification note above.

1946—Subsection (a), Act Aug. 2, 1946, § 9(b), repealed provisions which read: "to procure services or make any purchase without regard to the provisions of section 3709 of the Revised Statutes, provided the aggregate amount involved is not more than \$100".

TRANSFER OF PERSONNEL TO DISTRICT OF COLUMBIA

Section 201(f) of Act Dec. 24, 1973, Pub. L. 93-198, title II, 87 Stat. 779, provided: "For the purposes of subsection 713(d) [set out as a note under § 1-131], employees in the District of Columbia Redevelopment Land Agency shall be deemed to be transferred to the District of Columbia as of the effective date of this title [July 1, 1974] without a break in service."

§ 5-715. Appropriations authorized.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-716. Acquisition under District of Columbia Alley Dwelling Act.

From and after the termination of the period of one year, beginning August 2, 1946, all authority granted by sections 5-103 to 5-116, to acquire, by purchase, condemnation, or gift, lands, buildings and structures, or any interest therein, is hereby transferred to and vested in the Agency created by sections 5-701 to 5-719. During said one-year period said authority may be exercised by the National Capital Housing Authority only for projects that shall have been approved by the Planning Commission and the District Mayor: *Provided, however,* That failure of the Planning Commission, or the District Mayor to approve or disapprove in writing within sixty days after the submission by the National Capital Housing Authority shall be equivalent to a formal approval. Nothing contained in sections 5-103 to 5-116 or in sections 5-701 to 5-719 shall be interpreted as precluding the inclusion at any time of any alley or inhabited alley or alley dwelling or dwelling or square containing an inhabited alley in a project area to be planned, acquired, and disposed of under the provisions of sections 5-701 to 5-719. Any real property acquired by the Agency under the authority of sections 5-103 to 5-116 may be transferred or may be sold or leased by the Agency as provided in sections 5-701 to 5-719 for real property acquired for a project area redevelopment. The National Capital Housing Authority is hereby declared to be a redevelopment company and is hereby granted the power to purchase or lease redevelopment areas or parts thereof from the Agency in accordance with the provisions of sections 5-701 to 5-719. The National Capital Housing Authority shall keep regular books of account in accordance with standard auditing practices, covering all properties operated by it, showing detailed construction costs, management costs, repairs, maintenance, other operating costs, rents, subsidies, grants, allowances and exemptions; such books shall be subject to audit by the General Accounting Office; and the annual report of the National Capital Housing Authority shall include a summary of all transactions covered by such books and shall be made available to the public upon request. (Aug. 2, 1946, 60 Stat. 801, ch. 736, § 17; Jan. 2, 1975, Pub. L. 93-604, title VI, § 605, 88 Stat. 1963.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Section 605 of Pub. L. 93-604, deleted the word "annual" from the clause "such books shall be subject to annual audit by the General Accounting Office".

CROSS REFERENCE

National Capital Housing Authority as an agency of District of Columbia government, see § 5-103a.

§ 5-717a. Acceptance of financial assistance authorized.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-718. Effect upon existing statutes.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-720. Council authorized to transfer to District of Columbia Redevelopment Land Agency certain property located in Maine Avenue area.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-721. Same; determination of necessity.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-722. Same; transfer of jurisdiction to Agency.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-724. Same; reversion provisions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-725. Same; Council may not be required to transfer property needed for municipal purposes.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of

the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-728. Commissioner of the District of Columbia authorized to provide relocation services to displaced persons and concerns as a result of actions by the United States or District Governments—Displaced persons to be given preference in vacancies occurring in Government houses within the District—Housing surveys authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Relocation payments and assistance, community development program activities, see § 5-1003.

§ 5-730. Determination of available housing, for displaced persons, to be made prior to acquisition of real property for public works.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-732. Council authorized to make regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-732a. Relocation payments and assistance—Persons displaced by public works programs and projects of District Government and of Washington Metropolitan Area Transit Authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-733. Commissioner authorized and directed on behalf of the United States to transfer to District of Columbia Redevelopment Land Agency all right, title and interest of the United States to certain real property consisting of a part of Maryland Avenue and other streets in the southwest area.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-735. Same; Agency authorized to transfer to District of Columbia its interest in certain rights of way located on parts of Thirteen-and-a-Half Street, E Street and Thirteenth Street Southwest, for a consideration of \$82,896.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—PRESERVATION OF HISTORIC PLACES AND AREAS IN THE GEORGETOWN AREA

§ 5-802. Restrictions imposed on alteration of buildings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-804. Survey of district authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-806. Old Georgetown Market as historic landmark—Use as public market.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 9.—HORIZONTAL PROPERTY REGIMES

Sec.

5-922. Sharing of reconstruction cost where project is not insured or insurance indemnity is insufficient.

5-928a. Council authorized to prohibit condominium conversions.

§ 5-901. Short title—Citation of chapter.

SHORT TITLE

The first section of Act May 22, 1975, D.C. Law 1-3, provided: "That this act [amending §§ 5-902, 5-904, 5-906, 5-911, 5-913, 5-914, 5-915, 5-916, 5-921, 5-922] may be cited as the 'Horizontal Property Act Amendment Act of 1975.'"

§ 5-902. Definitions.

* * * * *

(b) "Condominium" means the ownership of single units in a multiunit project with common elements.

(c) "Condominium project" or "project" means a real estate condominium project; a plan or project condominium project; a plan or project whereby five or more apartments, rooms, office spaces, buildings, or other units, which may be either contiguous or detached, in existing or proposed buildings or structures are offered or proposed to be offered for sale.

* * * * *

(As amended May 22, 1975, D.C. Law 1-3, § 2(1), 21 DCR 3944.)

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended subsec. (b) by substituting "project" for "structure", and amended subsec. (c) generally.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 3 of Act May 22, 1975, D.C. Law 1-3, provided: "The amendments [to §§ 5-902, 904, 906, 911, 913, 914, 915, 916, 921, 922] made by this act shall take effect as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

§ 5-904. Status of condominium units within a horizontal property regime.

Once the property is subdivided into the horizontal property regime, a condominium unit in the project may be individually conveyed, leased, and encumbered and may be inherited or devised by will, as if it were sole and entirely independent of the other condominium units in the project of which it forms a part; the said separate units shall have the same incidents as real property and the corresponding individual titles and interests therein shall be recordable. (Dec. 21, 1963, 77 Stat. 451, Pub. L. 88-218, § 4; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended section by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-906. Ownership of condominium units, of common elements—Declaration—Voting—Individual unit deeds.

* * * * *

(c) The individual percentages shall be established at the time the horizontal property regime is constituted by the recording among the land records of the District of Columbia, of a declaration setting forth said percentages, shall have a permanent character, and shall not be changed without the acquiescence of the co-owners representing all the condominium units in the project, which said change shall be evidenced by an appropriate amendatory declaration to such effect recorded among the land records of the District of Columbia. Said share interest shall be set forth of record, in the initial individual condominium unit deeds. Said share interests in the common elements shall, nevertheless, be subject to mutual rights of ingress, egress, and regress of use and enjoyment of the other co-owners and a right of entry to officers, agents, and employees of the Government of the United States and the government of the District of Columbia acting in the performance of their official duties.

* * * * *

(As amended May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

* * * * *

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended subsec. (c) by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-910. Reference to plat.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-911. Termination and waiver of regime.

(a) All the co-owners or the sole owner of a project constituted into a horizontal property regime may terminate and waive this regime and regroup or merge the individual and several condominium units with the principal property; such termination and waiver shall be by certification to such effect upon the plat of condominium subdivision establishing the particular horizontal property regime under the hands and seals of the said sole owner or co-owners, in the presence of two credible witnesses, upon the same plat or upon a paper or parchment attached thereto: *Provided*, That the said individual condominium units are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided interest in the property of the debtor co-owner and said creditors or trustees under duly recorded deeds of trust, shall signify their assent to such termination and waiver upon the aforesaid plat, paper, or parchment: *Provided further*, That should the buildings or other improvements in a condominium project be more than two-thirds destroyed by fire or other disaster, the co-owners of three-fourths of the condominium project may waive and terminate the horizontal property regime and may certify to such termination and waiver: *Provided further*, That if within ninety days of the date of such damage or destruction:

(1) the council of co-owners does not determine to repair, reconstruct or rebuild as provided in sections 5-921 and 5-922 or,

(2) the insurance indemnity is delivered pro rata to the co-owners in conformity with the provisions of section 5-921 and if the co-owners do not terminate and waive the regime in conformity with this section, then any unit owner or any other person aggrieved thereby may file a petition in the Superior Court of the District of Columbia, setting forth under oath such facts as may be necessary to entitle the petitioner to the relief prayed and praying judicial termination of the horizontal property regime. Said petition may be served on the person designated in the bylaws in conformity with section 5-914(a) (7). The court may thereupon lay a rule upon the council of co-owners, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the tenth day, exclusive of Sundays and legal holidays, after service of such rule, why the prayers of said petition should not be granted. If no cause be shown against the prayer of the petition by the council of co-owners, or by any one of the co-owners, the court may determine in a summary way whether the facts warrant termination and thereupon the court may decree the particular horizontal property regime terminated.

* * * * *

(c) Upon such termination and waiver the provisions of section 5-910 shall no longer be applicable and reference to the principal project thereupon, shall be to the plat and record of the prior land

subdivision and thereupon the restraint against partition or division of the co-ownership imposed by section 5-907 shall no longer apply. In the event of such partition suit the net proceeds shall be divided among all the unit owners, in proportion to their respective undivided ownership of the common elements, after first paying off, out of the respective shares of the unit owners, all liens on the unit of each unit owner. To be valid such termination shall be recorded among the land records of the District of Columbia. (As amended May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended subsecs. (a) and (c) by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-913. Bylaws, availability for examination.

(a) The administration of every project constituted into a horizontal property regime shall be governed by the bylaws as the council of co-owners may from time to time adopt, which said bylaws together with the declaration, including recorded attachments thereto, referred to in section 5-906 shall be available for examination by all the co-owners, their duly authorized attorneys or agents, at convenient hours on working days that shall be set and announced for general knowledge.

(As amended May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended subsec. (a) by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-914. Necessary contents of bylaws—Modification of system.

(a) The bylaws must necessarily provide for at least the following:

(3) Care, upkeep, and surveillance of the project and its general or limited common elements and services.

(5) Designation, hiring, and dismissal of the personnel necessary for the good working order of the project and for the proper care of the general or limited common elements and to provide services for the project.

(b) The sole owner of the project, or if there be more than one, the co-owners representing two-thirds of the votes provided for in section 5-906 may at any time modify the system of administration, but each one of the particulars set forth in this section shall always be embodied in the bylaws. (As amended May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended subsecs. (a) (3), (5), and (b) by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-915. Books of receipts and expenditures—Availability for examination.

The manager, administrator, or the board of directors, or of administration, or other form of administration specified in the bylaws, shall keep books with detailed accounts in chronological order, of the receipts and of the expenditures affecting the project and its administration and specifying the maintenance and repair expenses of the common elements and any other expenses incurred. Both said books and the vouchers accrediting the entries made thereupon shall be available for examination by the co-owners, their duly authorized agents or attorneys, at convenient hours on working days that shall be set and announced for general knowledge. All books and records shall be kept in accordance with good accounting practice and shall be audited at least once a year by an auditor outside the organization. (Dec. 21, 1963, 77 Stat. 455, Pub. L. 88-218, § 15; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended section by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-916. Common profits, contributions for payment of common expenses of administration and maintenance.

(b) All co-owners are bound to contribute in accordance with the said percentages toward the expenses of administration and of maintenance and repairs of the general common elements and, in proper case, of the limited common elements of the project and toward any other expenses lawfully agreed upon by the council of co-owners.

(As amended May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended subsec. (b) by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-921. Application of insurance proceeds to reconstruction—Pro rata distribution in certain cases—Rules governing.

(a) In case of fire or other disaster the insurance indemnity shall, except as provided in the next succeeding paragraph of this section, be applied to reconstruct the project.

(b) Reconstruction shall not be compulsory where destruction comprises the whole or more than two-thirds of the project and other improvements in a condominium project. In such cases, and unless otherwise unanimously agreed upon by the co-owners, the indemnity shall be delivered pro rata to the co-owners entitled to it in accordance with provisions made by the bylaws or in accordance with a decision of three-fourths of the co-owners, if there be no bylaw provision, after first paying off, out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the unit of each co-owner. Should it be proper to proceed with the reconstruction, the provision for such eventuality

made in the bylaws shall be observed, or in lieu thereof, the decision of the council of co-owners shall prevail, subject to all provisions of law and regulations of the District of Columbia then in effect. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 21; May 22, 1975, D.C. Law 1-3, § 2(2), (3), 21 DCR 3945.)

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended section by substituting "project" for "building" and "buildings".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-922. Sharing of reconstruction cost where project is not insured or insurance indemnity is insufficient.

Where the project is not insured or where the insurance indemnity is insufficient to cover the cost of reconstruction the new project costs shall be paid by all the co-owners in the same proportion as their proportionate ownership of the common elements of the condominium project, and if any one or more of those composing the minority shall refuse to make such payments, the majority may proceed with the reconstruction at the expense of all the co-owners and the share of the resulting common expense may be assessed against all the co-owners and such assessment for this expense shall have the same priority as provided under section 5-917. (Dec. 21, 1963, 77 Stat. 458, Pub. L. 88-218, § 22; May 22, 1975, D.C. Law 1-3, § 2(2), 21 DCR 3945.)

AMENDMENT

1975—Act May 22, 1975, D.C. Law 1-3, amended section by substituting "project" for "building".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 5-902.

§ 5-928. Regulations of the Council and the Zoning Commission.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-928a. Council authorized to prohibit condominium conversions.

In addition to other authority delegated to it, and in accordance with section 406 of Reorganization Plan Numbered 2 of 1967, the District of Columbia Council is authorized, by regulation, to prohibit the establishment, after the effective date of such regulation, of any horizontal property regime, real estate condominiums project, or other conversion of units in a multiunit structure into a condominium pursuant to this chapter. (Aug. 29, 1974, Pub. L. 93-395, § 2, 88 Stat. 794.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

Reorganization Plan Numbered 2 of 1967, referred to in text, is set out in the appendix to Title 1, Administration, in the main edition of the Code.

CODIFICATION

Section was not enacted as part of the Horizontal Property Act of the District of Columbia, which comprises this chapter.

CROSS REFERENCE

Condominium conversions, rights and duties of landlords and tenants, see § 45-1662.

§ 5-930. Supplemental provisions relating to sewer and water services.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 5-931. Authority of Board of Commissioners under Reorganization Plan Numbered 5 of 1952.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—COMMUNITY DEVELOPMENT

Sec.

5-1001. Findings and purpose.

5-1002. Community development program.

5-1003. Community development program activities.

5-1004. Implementation of community development programs—Financial assistance—Authority of Mayor—Delegation of authority—Rules and regulations.

5-1005. Acquisition and disposition of real property.

5-1006. Rehabilitation of private property—Loans and grants—Insurance—Determination of public use.

5-1007. Construction—severability.

§ 5-1001. Findings and purpose.

(a) The Council finds and declares that the District of Columbia faces critical social, economic, and environmental problems arising in significant measures from:

(1) the concentration of poverty in areas of the city;

(2) overcrowding and deterioration of housing, exacerbated by inadequate construction of new units for the growing number of households, and inadequate resources to provide for the rehabilitation of existing units for use by residents of the affected areas;

(3) inadequate and inappropriate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment; and

(4) lack of essential commercial facilities and services in many of the city's communities; and

(5) need to improve the overall quality of the urban environment for the people of the District of Columbia.

(b) The Council further finds and declares that the future welfare of the District of Columbia and the well-being of its citizens depend on the establishment and maintenance of the District of Columbia as a viable physical, social, economic, and political community, and require for the benefit of the communities being directly affected:

(1) systematic and sustained action to eliminate blight, to conserve and renew aging urban neighborhoods, to improve the living environment of low and moderate income families, and to develop new residential and economic activity centers throughout the District;

(2) substantial expansion of and greater continuity in the scope and level of Federal and local financial assistance together with increased private investment in support of community development activities; and

(3) continuing effort at all levels of government to develop programs to meet identified needs and to improve the functioning and¹ departments and agencies responsible for planning, implementing, and evaluating community development efforts.

(c) The primary objective of this chapter is the maintenance and development of the District of Columbia as a viable urban community, by providing decent housing, a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective the chapter provides for the support of community development activities which are directed toward the following specific objectives:

(1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community;

(2) the elimination of conditions which are detrimental to health, safety, and public welfare and the establishment of programs to protect and improve the quality of the urban environment;

(3) the conservation and expansion of the District's housing stock in order to provide a suitable living environment for all persons, principally those of low and moderate income;

(4) the expansion and improvement of the quantity and quality of community services, particularly for persons of low and moderate income, which are essential for sound community development and for the development of a viable urban community;

(5) a more rational utilization of land and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

(6) the reduction of the isolation of income groups within the community and the promotion of an increase in the diversity and vitality of neighborhoods through the expansion of housing opportunities for persons of low and moderate income, particularly those with large families;

(7) the restoration and preservation of properties of special value for historic, architectural, or esthetic reasons;

(8) the establishment of data-gathering, planning, policy, and program development which will insure effective monitoring of and programming responsive to the changing numbers, characteristics, and needs of the people of the District of Columbia; and

(9) the continuation of development activities in those areas previously covered by urban renewal or neighborhood development plans until completed.

(Dec. 16, 1975, D.C. Law 1-39, § 2, 22 DCR 3436.)

EFFECTIVE DATE

Section 9 of Act Dec. 16, 1975, D.C. Law 1-39, provided: "This act [enacting this chapter] shall become effective pursuant to operation of the provisions of section 602(c) of the 'District of Columbia Self-Government and Governmental Reorganization Act' (Public Law 93-198: 87 Stat. 814) [§ 1-147(c)]."

SHORT TITLE

Section 1 of Act Dec. 16, 1975, D.C. Law 1-39 provided: "That this act [enacting this chapter] may be cited as the 'District of Columbia Community Development Act of 1975'."

§ 5-1002. Community development program.

(a) The Mayor annually shall prepare and submit to the Council a proposed Community Development Program (as such program is defined or may hereafter be defined in Title I of the Housing and Community Development Act of 1974), which—

(1) sets forth a summary of a three-year community development plan which identifies community development needs, demonstrates a comprehensive strategy for meeting those needs, and specifies both short and long-term community development objectives which have been developed in accordance with area-wide development planning and national urban growth policies;

(2) describes a program which—

(A) includes the activities to be undertaken to meet the identified community development needs and objectives, together with the estimated costs and location of such activities;

(B) indicates the resources which are proposed to be made available toward meeting the identified needs and objectives; and

(C) indicates the environmental review status of proposed community development activities;

(3) describes a program designed to—

(A) eliminate or prevent slums, blight, and deterioration where such conditions or needs exist; and

(B) provide improved community facilities and public improvements, including the provision of supporting health, social, and similar services where necessary and appropriate;

(4) includes a housing assistance plan which—

(A) accurately surveys the condition of the housing stock in the community and defines the housing assistance needs of lower income persons, including elderly and handicapped persons, large families, persons living in overcrowded conditions, persons paying more than 25% of their income for rent, and persons displaced or to be displaced, residing in or expected to reside in the community during the implementation of the plan;

¹ So in original. Probably should be "of".

(B) specifies a realistic annual goal for the number of dwelling units or persons to be assisted, including (i) the proposed number of new, rehabilitated, and existing dwelling units, and (ii) the sizes and types of housing units and assistance proposed to meet the needs of lower-income persons in the community as defined in the plan; and

(C) indicates the general locations of proposed housing for lower-income persons, with the objective of (i) furthering the revitalization of the community, including the restoration and rehabilitation of stable neighborhoods to the maximum extent possible, (ii) promoting greater choice of housing opportunities and avoiding concentrations of assisted persons in areas containing a high proportion of low income persons, and (iii) assuring the availability of public facilities and services adequate to serve proposed housing projects;

(5) includes such other materials, certifications, and assurances as may be required by law or regulation as conditions for financial assistance under the Housing and Community Development Act of 1974, and any other such requirements as may be specified by District of Columbia law.

(b) in¹ preparing the proposed Community Development Program, the Mayor shall:

(1) provide citizens with all information concerning the amount of funds available for proposed community development and housing activities, the range of activities that may be undertaken, and other important program requirements;

(2) hold at least two public hearings to obtain the views of citizens on community development and housing needs; and

(3) provide citizens a full and meaningful opportunity to participate in the planning, development and evaluation of the annual Community Development Program and any amendments or modifications thereto.

(c) Prior to the exercise of any powers granted by this act, the Mayor shall have submitted the proposed Community Development Program to the Council, and the Council shall have approved the same by resolution following a public hearing thereon: *Provided*, That the Council may approve the program with conditions or amendments and the program as so modified shall be the approved Community Development Program: and *Provided further*, That an approved Community Development Program may be modified at any time in accordance with the procedures herein prescribed for its original approval. Notwithstanding the above, the Mayor shall have the authority to make minor modifications consistent with the intent of the approved Program, only after such modifications have been submitted to the Council and have not been disapproved within 30 days, except that the Council may approve such modifications before the 30-day period has expired. (Dec. 16, 1975, D.C. Law 1-39, § 3, 22 DCR 3439.)

REFERENCE IN TEXT

"The Housing and Community Development Act of 1974", referred to in subsec. (a), is Act Aug. 22, 1974,

Pub. L. 93-383, 88 Stat. 633. Title I of that Act is classified primarily to sections 5301 et seq. of title 42, United States Code.

EFFECTIVE DATE

See note under § 5-1001.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-1004, 5-1006.

§ 5-1003. Community development program activities.

(a) ¹ An approved Community Development Program may include the following activities:

(1) the acquisition of real property (including air rights, water rights, and other interests therein) which is—

(A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;

(B) appropriate for rehabilitation or conservation activities;

(C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

(D) to be used for the provision of public works, facilities, and improvements; or

(E) to be used for other purposes;

(2) the acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements—including neighborhood facilities, senior centers, historic properties, utilities, streets, street lights, water and sewer facilities, foundations and platforms for air right sites, pedestrian malls and walkways, and parks, playgrounds, and recreation facilities, flood and drainage facilities, parking facilities, solid waste disposal facilities, and fire protection services and facilities;

(3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, and rehabilitation of buildings and improvements, including—

(A) interim assistance to alleviate harmful conditions in which immediate public action is needed;

(B) financing rehabilitation of privately owned properties through the use of direct loans, loan guarantees, grants, and other means when in support of Community Development Program objectives; and

(C) demolition and modernization of publicly owned low-rent housing when necessary to protect health, safety, and the public welfare;

(5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary

¹ So in original. Probably should be "In".

¹ So in original. There is no subsec. (b).

periods housing units to be utilized for the relocation of individuals and families displaced by program activities under this chapter;

(7) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to title, provided that the proceeds of any such disposition shall be expended only for approved Community Development Program activities;

(8) provision of public services not otherwise available in areas where other activities authorized by this chapter are being carried out in a concentrated manner, if such services are determined to be necessary or appropriate to support such other activities, and if such services are directed toward—

(A) improving the community's public services and facilities, including those concerned with the employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas; and

(B) coordinating public and private development programs;

(9) payment of the non-Federal share required in connection with the Federal grant-in-aid program undertaken as part of the Community Development Program subject to appropriations restrictions if any;

(10) payment of the cost of completing a project funded under Title I of the Housing Act of 1949;

(11) relocation payments and assistance for individuals, families, businesses, organizations, and farm operations displaced by activities authorized by this chapter;

(12) activities necessary—

(A) to develop a comprehensive community development plan, and

(B) to develop a policy-planning-management capacity so that the District of Columbia may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(13) payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are proposed; and

(14) any activity made eligible for financial assistance by the Housing and Community Development Act of 1974, or any amendment thereto.

(Dec. 16, 1975, D.C. Law 1-39, § 4, 22 DCR 3443.)

REFERENCES IN TEXT

"Title I of the Housing Act of 1949", referred to in subsec. (a) (9), is title I of Act July 15, 1949, ch. 338, 63 Stat. 414, which is classified generally to sections 1450 et seq. of title 42, United States Code.

"The Housing and Community Development Act of 1974", referred to in subsec. (a) (14), is Act Aug. 22, 1974, Pub. L. 93-383, 88 Stat. 633.

EFFECTIVE DATE

See note under § 5-1001.

CROSS REFERENCE

Relocation services, generally, see § 5-728 et seq.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5-1004.

§ 5-1004. Implementation of community development programs—Financial assistance—Authority of Mayor—Delegation of authority—Rules and regulations.

(a) After the approval of a Community Development Program by the Council pursuant to section 1-1002, the Mayor is authorized to submit to the Secretary of Housing and Urban Development an application, meeting the requirements of the Housing and Community Development Act of 1974 and regulations issued pursuant thereto or amendments thereof, for financial assistance to implement said program. In connection therewith, the Mayor is authorized to:

(1) consent to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969;

(2) consent, on behalf of the District Government and himself, to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official;

(3) give such other pledges, assurances, and certifications as may be required by the Housing and Community Development Act of 1974 and regulations issued pursuant thereto or amendments thereof; and

(4) accept grants, gifts, donations, bequests, and services from any source to assist in carrying out any of the purposes of this chapter.

(b) In implementing an approved Community Development Program the Mayor is authorized to perform or conduct any of the activities described in section 5-1003 and to do all other things necessary to carry out the intent of such program in accordance with any existing provisions of law not inconsistent herewith. Any power granted to the Mayor or any officer, employee, agency, or instrumentality of the District Government by any other law may, in addition to the purposes specified therein, be exercised in furtherance of the carrying out of an approved Community Development Program.

(c) Powers and functions vested in the Mayor by this chapter may be delegated by him to any officer, employee, agency, or instrumentality of the District Government by administrative order, and any officer, employee, agency, or instrumentality so designated is authorized to perform the same in accordance with the terms of the delegation.

(d) The Mayor is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out the purposes of this chapter. (Dec. 16, 1975, D.C. Law 1-39, § 5, 22 DCR 3448.)

REFERENCES IN TEXT

"The Housing and Community Development Act of 1974", referred to in subsec. (a), is Act Aug. 22, 1974, Pub. L. 93-383, 88 Stat. 633.

"National Environmental Policy Act of 1969", referred to in subsec. (a) (1), is the Act Jan. 1, 1970, Pub. L. 91-190, 83 Stat. 852, which is classified to sections 4321 et seq. of title 42, United States Code.

EFFECTIVE DATE

See note under § 5-1001.

§ 5-1005. Acquisition and disposition of real property.

(a) Real property acquired for the purposes of this chapter shall be acquired pursuant to subchapter II of chapter 13 of title 16. No such property shall be acquired unless its acquisition be authorized by the Council after notice of public hearing.

(b) Real property may also be acquired through gift, donation, bequest, assignment, or voluntary sale by the owner.

(c) For the purposes of this chapter, the Mayor may dispose of any real property owned by the District of Columbia by negotiation or public or private bid, on such terms and conditions as he deems necessary to accomplish the purposes of the chapter; *Provided*, That prior to any such disposition there shall be a public hearing on the proposed terms and conditions after at least thirty (30) days' public notice. (Dec. 16, 1975, D.C. Law 1-39, § 6, 22 DCR 3450.)

EFFECTIVE DATE

See note under § 5-1001.

§ 5-1006. Rehabilitation of private property—Loans and grants—Insurance—Determination of public use.

(a) The Mayor is hereby authorized to establish a Rehabilitation Loan and Grant Fund and to make or contract to make publicly-financed low-interest loans and grants to owners of property for the rehabilitation and improvement of such property in accordance with a Community Development Program approved pursuant to section 5-1002.

(b) The Mayor is further authorized to establish a Rehabilitations Loan Insurance Fund and to insure or contract to insure privately-financed loans to owners of property for the rehabilitation and improvement of such property in accordance with a Community Development Program approved pursuant to section 5-1002.

(c) Any and all publicly-financed rehabilitation loans and grants made by the Mayor, and any and all insurance commitments made by the Mayor in connection with privately-financed rehabilitation loans, and any and all money used or expended by the Mayor in connection with said loans or insurance commitments pursuant to the hereinabove described authority, and any and all acts performed by the Mayor in connection with any powers granted pursuant to this section, are hereby declared to be needed, contracted for, expended, or exercised for a public use. (Dec. 16, 1975, D.C. Law 1-39, § 7, 22 DCR 3450.)

EFFECTIVE DATE

See note under § 5-1001.

§ 5-1007. Construction—Severability.

(a) To the extent that any provisions of this chapter are inconsistent with the provisions of any other laws within the jurisdiction of the Council, the provisions of this chapter shall prevail and shall be deemed to supersede the provisions of such laws.

(b) If any provisions of this chapter be held invalid, the remainder of the chapter shall not be impaired thereby, but shall continue in full force and effect. (Dec. 16, 1975, D.C. Law 1-39, § 8, 22 DCR 3451.)

EFFECTIVE DATE

See note under § 5-1001.

TITLE 6.—HEALTH AND SAFETY

Chap. Sec.
17. Programs for the Aging..... 6-1701

Chapter 1.—HEALTH DEPARTMENT— ORGANIZATION

§ 6-101. Director of Public Health—Appointment and duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-104. Sanitary inspectors, appointment, qualifications—Removal of subordinates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-106. Report by Director of Public Health.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-107. Clerks to Director of Public Health—Appointment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-114. Council authorized to make health regulations and alter, amend, or repeal certain legalized ordinances.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-117. Tuberculosis Sanatoria under direction of Health Department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Volunteer services, see §§ 32-327 to 32-329.

§ 6-118. Council to promulgate regulations to prevent spread of diseases.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-119. "Communicable disease" defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-119h. Penalties—Prosecutions—Imposition of conditions by court.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—VITAL STATISTICS

§ 6-301. Births to be reported—Details of report—Certain stillbirths not to be reported—Receipt of report to be acknowledged to parent—Name of child—Delayed registrations—Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-303. Reports to be part of records—Records open to persons interested—Custodian of reports—Abstracts and analysis of data to be published annually.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 4.—DRAINAGE OF LOTS

§ 6-402. Notice to connect with water mains and sewers to be given by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-404. Notice to nonresident—How given—Upon failure of owner, Commissioner to make such connections—Cost of connections by Commissioner's lien on property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

Chapter 5.—GARBAGE

§ 6-501. Regulations for the collection and disposal of garbage to be made by Council—penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Discrimination in services provided

In claim that District of Columbia had discriminated in provision of municipal services, evidence failed to show a significant difference in level of refuse collection services accorded to various areas of city. *M. Burner et al. v. W. E. Washington et al.* (1975, 399 F. Supp. 44).

Solid waste disposal

As the business of disposing of solid waste is not a business or calling otherwise listed in licensing statutes, the District of Columbia may fix a license fee for the disposal of such wastes in such amount as will be commensurate with the cost to the District of regulating the disposal of such wastes, but any fee would be illegal to the extent that the revenue therefrom exceeded applicable costs. *Metropolitan D.C. Refuse Haulers Association et al. v. W. E. Washington, Commissioner, et al.* (1973, 479 F. 2d 1191, 156 U.S. App. D.C. 208; aff'g 360 F. Supp. 281).

Where licenses issued for collection and transportation of solid wastes in or through the District of Columbia did not cover disposal of solid wastes in the District, separate disposal fee of \$5 per ton was a "license fee" authorized by statute, to the extent that the revenue therefrom was commensurate with the costs of supervision and regulation. *Id.*

§ 6-502. Commissioner may contract for collection and disposal of garbage and refuse.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-503. Disposition by feeding to live stock.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-504. Collection and disposal of refuse a municipal function—Facilities to be purchased or leased—Sale of products—Employees to accept no gratuities—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Solid waste disposal

As the business of disposing of solid waste is not a business or calling otherwise listed in licensing statutes, the District of Columbia may fix a license fee for the disposal of such wastes in such amount as will be commensurate with the cost to the District of regulating the disposal of such wastes, but any fee would be illegal to the extent that the revenue therefrom exceeded applicable costs. *Metropolitan D.C. Refuse Haulers Association et al. v. W. E. Washington, Commissioner, et al.* (1973, 479 F. 2d 1191, 156 U.S. App. D.C. 208; aff'g 360 F. Supp. 281).

Where licenses issued for collection and transportation of solid wastes in or through the District of Columbia did not cover disposal of solid wastes in the District, separate disposal fee of \$5 per ton was a "license fee" authorized by statute, to the extent that the revenue therefrom was commensurate with the costs of supervision and regulation. *Id.*

§ 6-505. Incinerators for combustible refuse—Condemnation of site authorized—Alleys, highways.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-506. Construction of incinerator authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-507. Commissioner to fix time when plant shall begin to function—Other methods of disposal prohibited—Sale of salvageable material—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-508. Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-509. Machinery and personnel authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-510. Appropriation authorized—Abandonment of leased plant.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-511. Use of incinerator by certain Maryland and Virginia municipalities authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—MANUFACTURE, RENOVATION, AND SALE OF MATTRESSES

§ 6-601. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-603. Tag requirements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-606. Administration by Director of Public Health—Commissioner to make regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—PRIVIES

§ 6-703. Regulation of construction and maintenance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-704. Penalty for violation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—AIR POLLUTION CONTROL

§ 6-811. Declaration of purpose.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-812. Emission and air quality standards established by the District of Columbia Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Solid waste disposal

As the business of disposing of solid waste is not a business or calling otherwise listed in licensing statutes, the District of Columbia may fix a license fee for the disposal of such wastes in such amount as will be commensurate with the cost to the District of regulating the disposal of such wastes, but any fee would be illegal to the extent that the revenue therefrom exceeded applicable costs. *Metropolitan D.C. Refuse Haulers Association et al. v. W. E. Washington, Commissioner, et al.* (1973, 479 F.2d 1191, 156 U.S. App. D.C. 208; aff'g 360 F. Supp. 281).

Where licenses issued for collection and transportation of solid wastes in or through the District of Columbia did not cover disposal of solid wastes in the District, separate disposal fee of \$5 per ton was a "license fee" authorized by statute, to the extent that the revenue therefrom was commensurate with the costs of supervision and regulation. *Id.*

§ 6-813. Air pollution control program for the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Injunctions

In action to prevent completion of two buildings at a waterfront area of District of Columbia, evidence failed to establish that defendant corporations were in violation of an emission standard or limitation as defined by Clean Air Act, that buildings were in violation of District's regulations applicable to "statutory sources" of pollutants or that defendants' developments would cause national ambient air quality standards to be exceeded in 1977. *Citizens Association of Georgetown et al. v. W. E. Washington, Commissioner etc., et al.* (1974, 383 F. Supp. 136).

In absence of a threat of immediate injury from construction of buildings in Georgetown waterfront area of Washington, D.C., in view of unlikelihood that the developments would violate national air quality standards, and in light of intervening determination by Environmental Protection Agency that preconstruction review procedures relevant to the facilities would not be applied retroactively to dates when construction commenced, preliminary injunction would not be issued against construction of the projects. *Citizens Association of Georgetown et al. v. W. E. Washington, Commissioner etc., et al.* (1974, 370 F.Supp. 1101).

Review

Controversy over refusal of mayor-commissioner and his designated agents to grant petitioners' request to take immediate steps to correct by appropriate action an alleged air pollution emergency in District of Columbia was not a "contested case" within purview of the D.C. Administrative Procedure Act granting limited judicial review to District of Columbia Court of Appeals in respect to orders or decisions of a District of Columbia agency made "after a hearing before the Commissioner or the Council or before an agency" in a "contested case." *Environmental Defense Fund, Inc., et al. v. Mayor-Commissioner of the District of Columbia et al.* (D.C. App. 1974, 317 A.2d 515).

Chapter 9.—WEEDS AND PLANT DISEASES

§ 6-902. Removal of weeds by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—BLACK-OUTS IN WAR TIME

§ 6-1001. Commissioner authorized to order black-outs—Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1002. Cooperation with Maryland and Virginia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1003. Secretary of the Army to assist and cooperate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1006. Appointment of special police during war.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1007. Volunteer services for government of District during war.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1008. Evacuation from District during war.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1009. Establishment of organizations for civilian defense—Use of District of Columbia employees—Right of eminent domain—Funds for supplies and personnel—Hospitalization—Use of private property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1010. Penalties for violation of chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1013. Extent of power and duties of Commissioner and Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1014. Limitation on expenditures.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1015. Services to veterans and war workers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—FEDERAL GOVERNMENT RESTAURANTS

§ 6-1101. Health regulations applicable to federal government restaurants—Exceptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 12.—OFFICE OF CIVIL DEFENSE

§ 6-1202. Office of civil defense authorized—Director and other personnel—Compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TRANSFER OF FUNCTIONS

Organization Order No. 51 of the Commissioner of the District of Columbia, dated Dec. 27, 1974, established in the Executive Office of the Commissioner, a new Office of Civil Defense, headed by a Director, and prescribed the purposes and functions thereof. The Order replaced and rescinded Commissioner's Order [Organization Action] No. 71-259, dated July 26, 1971, as amended by C.O. No. 73-156, July 5, 1973.

The Order is set out in the appendix to title 1, Administration.

§ 6-1202a. Appointment of member of Metropolitan Police Department or member of Fire Department to position in office performing functions of Office of Civil Defense.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1203. Powers and duties.

The Office of Civil Defense is authorized and directed, subject to the direction and control of the Mayor of the District—

* * * * *

(h) to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the District to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and supply such equipment, supplies, and facilities to the said Director upon request, and, when authorized by the Mayor, appropriations available to the District of Columbia may be used to match financial contributions made by any department or agency of the United States to the government of the District for the purchase of civil defense equipment and supplies;

* * * * *

(As amended Oct. 26, 1973, Pub. L. 93-140, § 17, 87 Stat. 507.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Oct. 26, 1973, amended subsec. (h) by striking out the semicolon after "request" and by inserting in lieu thereof a comma and the following: "and, when authorized by the Commissioner, appropriations available to the District of Columbia may be used to match financial contributions made by any department or agency of the United States to the government of the District for the purchase of civil defense equipment and supplies;"

APPROPRIATIONS

See note under § 1-226a.

§ 6-1206. Yearly report of activities and expenditures.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1207. Interstate civil defense compacts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 13.—CANCER AND MALIGNANT NEOPLASTIC DISEASES

§ 6-1301. Council authorized to promulgate regulations requiring reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1304. Penalties for violations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—RIGHTS OF BLIND AND PHYSICALLY DISABLED PERSONS

§ 6-1502. Equal access to public accommodations and conveyances.

CROSS REFERENCE

Federal contribution to make subway and rapid rail transit system accessible to handicapped persons, see § 1-1442a.

§ 6-1507. White Cane Safety Day.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 16.—INTERSTATE COMPACT ON MENTAL HEALTH

§ 6-1601. Authority to enter into compact.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1602. Compact administrator — Designation — Authority—Cooperation with government agencies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1604. Payments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 6-1606. Distribution of copies of law.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 17.—PROGRAMS FOR THE AGING

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

6-1701. Purpose.

6-1702. Definitions.

SUBCHAPTER II.—OFFICE ON AGING

6-1711. Establishment of Office.

6-1712. Executive Director—Staffing of Office.

6-1713. Functions of Executive Director.

6-1714. Impact statements.

6-1715. Standards for grant and contract awards.

6-1716. Transfer of funds and positions.

SUBCHAPTER III.—COMMISSION ON AGING

6-1721. Establishment of Commission.

6-1722. Membership.

6-1723. Qualifications for membership.

6-1724. Terms of office.

6-1725. Filling vacancies.

6-1726. Rules of procedure.

6-1727. Selection of chairperson.

6-1728. Compensation.

6-1729. Staff assistance.

6-1730. Functions.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 6-1701. Purpose.

It is the intent of the Council of the District of Columbia that the District government shall insure a full range of health, education, employment, and social services shall be available to the aged in the District of Columbia, and the planning and operation of such programs will be undertaken as a partnership of older citizens, families, community leaders, private agencies, and the District of Columbia government. (Oct. 29, 1975, D.C. Law 1-24, title I, § 101, 22 DCR 2456.)

EFFECTIVE DATE

Section 501 of Act Oct. 29, 1975, D.C. Law 1-24, title V, provided: "This act [enacting this chapter] shall be effective immediately at the end of the thirty day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) beginning on the date this act is submitted to the Congress, as provided in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of Act Oct. 29, 1975, D.C. Law 1-24, provided: "That this act [enacting this chapter] may be cited as 'the District of Columbia Act on the Aging'."

ABOLISHMENT OF ADVISORY COMMITTEE ON AGING

Section 411 of Act Oct. 29, 1975, D.C. Law 1-24, title IV, provided: "The District of Columbia Advisory Committee on Aging, established by Organization Order No. 20, dated May 12, 1969, as amended by Order No. 75-67, is hereby abolished."

§ 6-1702. Definitions.

(a) "Office" means the Office on Aging created by section 6-1711.

(b) "Director" means the Executive Director of the Office on Aging.

(c) "Commission" means the Commission on the Aging created by section 6-1721.

(d) "Aged" means a person 60 years of age or older.

(e) "Services to the aged" means those services designed to provide assistance to the aged, including nutritional programs, transportation and legal services, health and financial assistance, employment and housing programs, recreational opportunities, and information, referral, and counseling services. (Oct. 29, 1975, D.C. Law 1-24, title II, § 201, 22 DCR 2456.)

SUBCHAPTER II.—OFFICE ON AGING

§ 6-1711. Establishment of Office.

There is established within the Executive Office of the Mayor of the District of Columbia an Office on Aging. The Office shall provide within the District government a single administrative unit, responsible to the Mayor, to administer the provisions of the Older Americans Act (P.L. 89-73, as amended) [42 U.S.C. 3001 et seq.], such other programs as shall be delegated to it by the Mayor or the Council of the District of Columbia, and to promote the welfare of the aged. (Oct. 29, 1975, D.C. Law 1-24, title III, § 301, 22 DCR 2457.)

EFFECTIVE DATE

See note under § 6-1701.

CROSS REFERENCE

Review and report on activities of Office on Aging by Commission on Aging, see § 6-1730.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1702, 6-1716.

§ 6-1712. Executive Director—Staffing of Office.

The Office shall be headed by an Executive Director, who shall be appointed by the Mayor with the advice and consent of the Council of the District of Columbia, from a list of not more than three names submitted to him by the Commission. The Director shall devote his full time to the duties of his office. His annual compensation shall be fixed in accordance with chapter 51 of Title 5, U.S. Code (relating to the classification of government employees and related matters), but shall be not less than a GS-15, step one. He shall have such staff as is approved in the current District government budget and Federal grants, plus any temporary staff approved by the Office of Budget and Management Systems. (Oct. 29, 1975, D.C. Law 1-24, title III, § 302, 22 DCR 2457.)

REFERENCE IN TEXT

"GS-15, step one", referred to in the text, is contained in the General Schedule which is set out under section 5332 of title 5, United States Code.

CROSS REFERENCE

Commission on Aging to submit list of persons recommended for appointment to position of Director of Office on Aging, see § 6-1730.

§ 6-1713. Functions of Executive Director.

In order to carry out the purpose of this chapter, the Director shall:

1. Serve as an advocate for the aged in the District of Columbia.
2. Contract with, and make grants to, public and private agencies using Older Americans Act funds, other Federal funds received by the Office, and District government appropriated funds.
3. Provide information and technical assistance with respect to programs and services for the aged to the Mayor, the Commission on Aging, the Council of the District of Columbia, other District government agencies and departments, and the community. This shall include, when necessary, contracting for consultant assistance outside the District government.
4. Consider the advice and recommendations of the Commission in carrying out his responsibilities under this chapter.
5. File an annual report on the operation of the Office with the Mayor and the Council of the District of Columbia, and make it available to the public.
6. Publish a directory of services available to the aged through the District government and including, to the maximum extent possible, sources of non-public assistance and programs for the aged in the District of Columbia. The directory shall be revised at least every two years.
7. Identify areas of need for service or improvement of service and bring them to the attention of the Mayor and Commission, with suggestions for meeting such needs, including conducting or funding research and demonstration projects to test such suggestions.

8. Carry responsibility for assuring necessary control, evaluation, audit, and reporting on programs funded through the office.

9. Prepare in timely fashion the state plan required under the Older Americans Act [42 U.S.C. 3001 et seq.] and forward it to the Commission and Mayor for approval.

10. Develop, with the advice of the Commission, a five-year plan of policies, programs, services and activities to benefit aged residents of the District of Columbia. Such plan shall be reviewed and up-dated annually. (Oct. 29, 1975, D.C. Law 1-24, title III, § 303, 22 DCR 2457.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6-1729.

§ 6-1714. Impact statements.

All heads of departments and agencies of the District government are required at least 30 days prior to implementation of any proposed policies or programs that will have a major impact on the aged to submit such proposals to the Director for comment. If the impact of the proposal is determined by the Director to be adverse, he shall file a statement of this finding with the Mayor, the Commission, and the Council of the District of Columbia, as well as the originating department or agency. (Oct. 29, 1975, D.C. Law 1-24, title III, § 304, 22 DCR 2459.)

§ 6-1715. Standards for grant and contract awards.

After consultation with the Commission on Aging established by section 6-1721, the Director shall develop and publish the standards that the Office will use in making decisions on the award of grants and contracts. (Oct. 29, 1975, D.C. Law 1-24, title III, § 305, 22 DCR 2459.)

§ 6-1716. Transfer of funds and positions.

The Division of Services to the Aging presently located within the Department of Human Resources, and all positions and unexpended funds presently allocated to this Division are hereby transferred to the new office created under section 6-1711. (Oct. 29, 1975, D.C. Law 1-24, title III, § 306, 22 DCR 2459.)

SUBCHAPTER III.—COMMISSION ON AGING

§ 6-1721. Establishment of Commission.

There is hereby established in the Executive Office of the Mayor of the District of Columbia a Commission on Aging to advise the Mayor, the Director of the Office on Aging, the Council of the District of Columbia, and the public concerning the views and needs of the aged in the District of Columbia. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 401, 22 DCR 2460.)

EFFECTIVE DATE

See note under § 6-1701.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6-1702, 6-1715.

§ 6-1722. Membership.

The Commission shall consist of fifteen public (voting) members appointed by the Mayor, with the advice and consent of the Council of the District of Columbia. At least one-half of the membership of the Commission shall consist of actual consumers

of services under this program, including low income, and minority older persons, at least in proportion to the number of minority older persons in the District of Columbia. There shall also be the following ex-officio members: The Directors of the Department of Human Resources, the Office of Housing and Community Development, the Department of Recreation, the Department of Highways and Traffic, the Office of Manpower Administration, the Public Library; the Chief of the Metropolitan Police Department (or the Director or chief of such successor agencies), and a member of the Council of the District of Columbia. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 402, 22 DCR 2460.)

§ 6-1723. Qualifications for membership.

Members shall be appointed with due consideration for fair geographical distribution, representation from organizations of older persons, public and voluntary agencies concerned with the aged, and members of the general public who have given evidence of particular dedication to and understanding of the needs of the aged. At least eight members shall be 60 years of age or over, and all must be residents of the District of Columbia. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 403, 22 DCR 2460.)

§ 6-1724. Terms of office.

Members of the Commission shall serve terms of three years except, that, of the initial membership, five shall be appointed for a term of three years, five for a term of two years, and five for one year. Members may be reappointed but may serve no more than two consecutive terms. Terms shall regularly begin on the anniversary of the effective date of this chapter [October 29, 1975]. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 404, 22 DCR 2461.)

§ 6-1725. Filling vacancies.

When a vacancy develops on the Commission, the Mayor with the advice and consent of the Council of the District of Columbia may appoint a successor to fill the unexpired portion of the term. No member may continue to serve beyond the expiration date of his term. If within 30 calendar days of development of a vacancy on the Commission the Mayor fails to transmit to the Council of the District of Columbia a nomination for that vacancy, the Council of the District of Columbia may make the appointment. If within 60 calendar days of submission of a nomination for the Commission the Council of the District of Columbia fails to act, the nomination shall be deemed confirmed. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 405, 22 DCR 2461.)

§ 6-1726. Rules of procedure.

The Commission shall develop its own rules of procedure, except they shall provide, the Commission shall meet at least every other month. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 406, 22 DCR 2461.)

§ 6-1727. Selection of chairperson.

The Commission shall select its own Chairperson, by vote. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 407, 22 DCR 2461.)

§ 6-1728. Compensation.

All members shall serve without compensation, but expenses incurred by the Commission as a whole, or by its individual members, when duly authorized, will become an obligation against appropriate District government and Federal funds designated for that purpose. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 408, 22 DCR 2462.)

§ 6-1729. Staff assistance.

Necessary staff services shall be supplied in accordance with positions and funding approved in the current District government budget. In addition, the Director of the Office on Aging shall provide information and technical assistance as required under section 6-1713. (Oct. 29, 1975, D.C. Law 1-24, title IV, § 409, 22 DCR 2462.)

§ 6-1730. Functions.

The Commission on Aging shall:

A. Serve as an advocate for older persons in the District of Columbia.

B. Review and submit to the Mayor, the Council of the District of Columbia, the Office on Aging, an annual report including analysis of the needs of the aged in the District of Columbia.

C. Cooperate with other agencies (Federal, State, private) concerned with activities pertaining to the aged.

D. Approve in timely fashion the annual state plan required under the Older Americans Act [42 U.S.C. 3001 et seq.], and submit it to the Mayor for transmission to the Department of Health, Education and Welfare. The statement of approval of the Commission shall be transmitted to the Department of Health, Education and Welfare with the plan.

E. Develop a list of not more than three persons the Commission recommends for the position of Director of the Office on Aging, whenever that position is vacant, and submit that list to the Mayor.

F. Conduct or participate in public hearings and other forums to determine views of older persons and other members of the public on matters affecting the health, safety and welfare of the aged in the District of Columbia.

G. Bring to the attention of the Mayor and the Office on Aging cases of neglect and abuse of the aged and incidents of bias against the aged in the administration of the laws of the District of Columbia.

H. Review and comment on proposed District and Federal legislation, regulations, policies and programs and make policy recommendations on issues affecting the health, safety and welfare of the aged.

I. Provide a continuing review of the activities of the Office on Aging and issue reports thereon at least annually.

(Oct. 29, 1975, D.C. Law 1-24, title IV, § 410, 22 DCR 2462.)

TITLE 7.—HIGHWAYS, STREETS, BRIDGES

Chapter 1.—HIGHWAY PLANS

Sec.

7-112a. Applicability of sections 7-108 to 7-112 to Interstate System.

7-133. Repealed.

7-135b. Federal-aid highway projects—Contract authority.

7-135c. Federal-aid highway projects—Elimination of grade-crossings.

§ 7-101. Commissioner to have control of streets—Power to make regulations for repairs.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Snow and ice removal, appropriations, see § 7-807.

§ 7-102. Commissioner to have jurisdiction over public roads and bridges—Exceptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-103. Abutment of Highway Bridge under control of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-106. Council may change names of streets when two streets have same name.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-107. Council to name streets outside of city limits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-108. Permanent highway plan—Preparation by Commissioner—Width of highways.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Applicability to Interstate System, see § 7-112a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1009, 5-718, 7-109, 7-112, 7-112a, 7-114, 7-116, 7-118, 7-122.

§ 7-109. Permanent highway—Plans to be prepared in sections—Conformity to subdivisions—Plans to be submitted to National Capital Planning Commission—Recordation—Landowners to submit plat of proposed highways.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Applicability to Interstate System, see § 7-112a.

§ 7-111. Entry upon property authorized for purposes of survey.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-112. Council authorized to name streets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1009, 7-109, 7-112a, 7-114, 7-116, 7-118.

§ 7-112a. Applicability of sections 7-108 to 7-112 to Interstate System.

None of the provisions of sections 7-108 to 7-112 shall apply to any segment of the Interstate System within the District of Columbia. (Aug. 13, 1973, Pub. L. 93-87, Title I, § 135, 87 Stat. 268.)

§ 7-113. Abandonment or readjustment of streets to provide ground for educational, religious, or similar institutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-114. Use of property by owner until condemnation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-115. Public notice to owners of plan—Opportunity to be heard.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-116. Powers may be exercised through Beatty and Hawkins's addition to Georgetown.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-117. Acceptance of dedicated streets—Building restrictions—Right-of-way for sewers and water-mains.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-119. Resubdivision of property affected by highway plan pending condemnation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-122. New highway plans authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-123. Commissioner of the District of Columbia to close certain streets, roads, or highways in the District of Columbia rendered useless or unnecessary by the highway plan—Consent of owners.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-124. Plat to be filed—Assessment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-125. Subdivision to conform to plan of Washington—Approval of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-126. District of Columbia authorized to use certain land owned by United States for street purposes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-127. Relocation of Michigan Avenue—Relocation authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-128. Use of part of Soldiers' Home.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-129. Portion of Michigan Avenue abandoned.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-130. Surveyor to prepare plats showing relocation of Michigan Avenue—Recordation of plats to transfer title.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-131. Right-of-way to Washington Railway and Electric Company.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-133. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(d), 87 Stat. 832.

Section, acts May 18, 1954, 68 Stat. 110, ch. 218, title IV, § 402; Sept. 30, 1966, 80 Stat. 858, Pub. L. 89-610, title X, § 1001; Jan. 5, 1971, Pub. L. 91-650, title I, § 103(c), 84 Stat. 1930; authorized loans for the District highway construction program. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the repeal of this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

LOAN PAYMENT OBLIGATION

See note under § 9-220.

§ 7-134. Use of land in squares 354 and 355 for Southwest Freeway and for redevelopment of Southwest area of District.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-135. Federal-aid highway projects—Commissioner's authority to provide certain payments and services.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-135a. Federal-aid highway projects—Commissioner's authority to pay public utility relocation expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-135b. Federal-aid highway projects—Contract authority.

The Mayor of the District of Columbia is authorized to enter into contracts in connection with projects undertaken as Federal-aid highway projects under the provisions of the Federal Aid Highway Act of 1944 in such amounts as shall be approved by the Federal Highway Administration, Department of Transportation. (Oct. 26, 1973, Pub. L. 93-140, § 15, 87 Stat. 507.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The Federal Aid Highway Act of 1944, referred to in text, was repealed by section 2(28) of Act Aug. 27, 1958, Pub. L. 85-767, 72 Stat. 919 (of which § 1 revised and enacted title 23, U.S. Code, into law), and is now covered by various provisions of title 23, U.S. Code.

APPROPRIATIONS

See note under § 1-226a.

§ 7-135c. Federal-aid highway projects—Elimination of grade-crossings.

The Mayor of the District of Columbia is authorized to construct grade-crossing elimination and other wholly District construction projects or those authorized under section 8 of the Act of June 16, 1936 (49 Stat. 1521), and section 1(b) of the Federal Aid Highway Act of 1938, in accordance with the provisions of such Acts. Pursuant to this authority, the Mayor may make payment to contractors and payment for other expenses in connection with the costs of surveys, design, construction, and inspection pending reimbursement to the District of Columbia by the Federal Highway Administration, Department of Transportation, or other parties participating in such projects. (Oct. 26, 1973, Pub. L. 93-140, § 16, 87 Stat. 507.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

Section 8 of the Act of June 16, 1936 (49 Stat. 1521), and section 1(b) of the Federal Aid Highway Act of 1938, referred to in text, were repealed by section 2 (19) and (21) of Act Aug. 27, 1958, Pub. L. 85-767, 72 Stat. 919 (of which § 1 revised and enacted title 23, U.S. Code, into law). Section 8 of the 1936 Act is now covered by 23 U.S.C. 109(e), and section 1(b) of the 1938 Act is covered by 23 U.S.C. 101(a) and 103(b).

APPROPRIATIONS

See note under § 1-226a.

§ 7-136. Authority to acquire and transfer to Secretary of the Interior real property in exchange for real property transferred to the District—Payments in lieu of transfer of property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—LAND FOR STREETS

§ 7-201. Council may open, extend, or widen streets, avenue, roads, or highways according to permanent system of highways—Damages and costs assessed as benefits—Damages and costs paid from revenues of District—Repaid from assessments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-202. Condemnation of land for streets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-210. Confirmation of verdict—Payment of award.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-216. Condemnation for streets through undivided part of plot.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-219. If damages and costs exceed benefits, Commissioner may dismiss cause.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-221. Benefits assessed against land no part of which was taken—Notice of assessment, how given.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—ALLEYS AND MINOR STREETS

§ 7-301. Alleys and minor streets opened, extended, widened, or straightened by Commissioner—Conditions—Petition of landowners—Minor street defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-302. Useless alleys—Sale of original alleys—Reversion of title to owner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Payment of compensation

Although District of Columbia Council referred only to Code provision which authorized acceptance of dedication of an alley in connection with the closing of an existing alley but which did not mention payment of money in its resolution closing an "original" alley owned by the United States, Council also proceeded under other applicable provisions of the Code and, under those other provisions, was authorized to collect money for the closing on behalf of the United States. *Calvin-Humphrey Corporation v. United States* (1973, 480 F. 2d 1323, 202 Ct. Cl. 519).

Decision that government of District of Columbia is not entitled to collect money from abutting property owners for the closing of an alley is confined strictly to alleys dedicated by developers and does not apply to an "original" alley, the title to which is in the United States. *Id.*

§ 7-303. Alleys may be closed on dedication of new ones—Application of property owners—Future ownership of closed alleys—Plats recorded.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Payment of compensation

Although District of Columbia Council referred only to Code provision which authorized acceptance of dedication of an alley in connection with the closing of an existing alley but which did not mention payment of money in its resolution closing an "original" alley owned by the United States, Council also proceeded under other applicable provisions of the Code and, under those other provisions, was authorized to collect money for the closing on behalf of the United States. *Calvin-Humphrey Corporation v. United States* (1973, 480 F. 2d 1323, 202 Ct. Cl. 519).

Decision that government of District of Columbia is not entitled to collect money from abutting property owners for the closing of an alley is confined strictly to alleys dedicated by developers and does not apply to an "original" alley, the title to which is in the United States. *Id.*

§ 7-304. Closing narrow alleys—Application of property owners—Disposal of land.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Payment of compensation

Although District of Columbia Council referred only to Code provision which authorized acceptance of dedication of an alley in connection with the closing of an existing alley but which did not mention payment of money in its resolution closing an "original" alley owned by the United States, Council also proceeded under other applicable provisions of the Code and, under those other provisions, was authorized to collect money for the closing on behalf of the United States. *Calvin-Humphrey Corporation v. United States* (1973, 480 F.2d 1323, 202 Ct. Cl. 519)

Decision that government of District of Columbia is not entitled to collect money from abutting property owners for the closing of an alley is confined strictly to alleys dedicated by developers and does not apply to an "original" alley, the title to which is in the United States. *Id.*

§ 7-305. Alleys closed for single improvement on two-thirds of square.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-306. Changing of alleyways—Petition of property owners—New dedication—Plat—Future ownership.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-307. Copy of order and plat recorded—Ownership of closed alley.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-308. Obliterating subdivisions and alleys—Filing copy of order.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-309. Closing alleys—Authorized upon acquisition of abutting property by District of Columbia—Property owner's right of access preserved.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-310. Land owned by District may be set aside for alley purposes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-311. Public notice—Hearings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-312. Maps—Preparation—Recordation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-313. Condemnation to open, widen, or straighten alleys or minor streets—Plats.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-317. Objections to verdict—When filed—Vacation or modification by court—New jury—Costs.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-320. Awards paid by Treasurer of United States—Benefits deducted from damages.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-324. Benefit assessments from condemnation for alleys or minor streets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-325. Proceeds of sale of lands paid into Treasury.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-326. Plats to be made by surveyor—Costs.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-327. Correcting defects in certain prior proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-330. Surplus from sale of land in which United States is interested to be paid into Treasury.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-331. Costs paid from alley appropriations when proceedings fail.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-333. Commissioner to employ assistant corporation counsel for condemnation proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 4.—CLOSING STREETS, ALLEYS, OR HIGHWAYS

§ 7-401. Street Readjustment—Closing of unnecessary public ways authorized—Disposition of property—Reference to Planning Commission.

The Council of the District of Columbia is authorized to close any street, road, highway, or alley, or any part of any street, road, highway, or alley, in the District of Columbia when, in the judgment of said Council, such street, road, highway, or alley, or

such part of a street, road, highway, or alley, has been rendered useless or unnecessary, the title to the land embraced within the public space so closed to revert to the owners of the abutting property subject to such compensation therefor in money, land, or structures as the Council of the District of Columbia, in its judgment, may find just and equitable, in view of all the circumstances of the case affecting near-by property of abutters and/or non-abutters: *Provided*, That if the title to such land be in the United States the property shall not revert to the owners of the abutting property but may be disposed of by the Mayor of the District of Columbia to the best advantage of the locality and the properties therein and thereby affected, which properties thenceforth shall become assessable on the books of the tax assessor of the District of Columbia in all respects as other private property in the District; or also said property be sold as provided in section 7-302 of this title, unless the use of such land is requested by some other department, bureau, or commission of the government of the United States for purposes not otherwise inconsistent with the proper development of the District of Columbia: *Provided further*, That the said closing by said Council is made expedient or advisable by reason of change in the highway plan or by reason of provision for access or better access to the abutting or nearby property and the convenience of the public by other street, road, highway, or alley facilities, or by reason of the acquisition by the District of Columbia or by the United States of America for school, park, playground, or other public purposes, of all the property abutting on the street, road, highway, or alley, or part of a street, road, highway, or alley, proposed to be closed or for other public reasons: *And provided further*, That the proposed closing of any street, road, highway, or alley, or any parts thereof as provided for in this chapter shall be referred to the National Capital Planning Commission for its recommendation. (Dec. 15, 1932, 47 Stat. 747, ch. 4, § 1.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section is set out in this supplement to correct an editorial error in the main edition.

NOTES TO DECISIONS

Administrative procedure

Decision of District of Columbia Council, pursuant to the Street Readjustment Act, to close portion of street and, once closed, to authorize the surveyor to convey title to the abutting landowners for development purposes did not constitute a "contested case" within meaning of the Administrative Procedure Act; in determining whether it should close the street the Council was exercising legislative discretion based on primarily legislative facts; also, Council's decision regarding compensation, though primarily adjudicatory, did not fall within the "contested case" definition since it was subject to trial de novo in Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A. 2d 310).

Construction

The options afforded the District of Columbia by this section in dealing with United States property are not mutually exclusive. *O. T. Carr, Jr., et al. v. District of Columbia et al.* (1974, 371 F. Supp. 293; aff'd and rem'd for modification 521 F. 2d 325, 172 U.S. App. D.C. 224).

The authority of the District of Columbia to sell closed United States alley land does not apply only when the city council is unable to dispose of the alley space in a manner which is advantageous to the locality in surrounding property affected. *Id.*

Discretion

Decision whether an alley is to be closed is a matter of discretion exercised by the District of Columbia Council. *Metropolitan Washington Coalition for Clean Air v. Department of Economic Development et al.* (1973, 373 F. Supp. 1096).

Disposition of proceeds

Any money received by the District of Columbia for the sale of closed alley space owned by the United States must be deposited by the District in the United States Treasury for the benefit of the overall United States revenues, not District of Columbia accounts or revenues. *O. T. Carr, Jr., et al. v. District of Columbia et al.* (1974, 371 F. Supp. 293; aff'd and rem'd for modification 521 F. 2d 325, 172 U.S. App. D.C. 224).

Environmental impact

Recommendation to close part of public alley made by planning commission to District of Columbia city council which had the authority to close alley constituted local action, not "federal action," within meaning of National Environmental Policy Act requiring filing of an environmental impact statement in every federal action significantly affecting quality of human environment; thus, recommendation did not have to be accompanied by environmental impact statement. *Metropolitan Washington Coalition for Clean Air v. Department of Economic Development et al.* (1973, 373 F. Supp. 1096).

Joinder

Where declaratory judgment action concerning whether the District of Columbia might charge abutting landowners a price based on market value for the original United States alley space closed by the District involved amounts in excess of \$50,000, the United States could not be joined as a party even though the money received by the District must be deposited into the United States Treasury. *O. T. Carr, Jr., et al. v. District of Columbia et al.* (1974, 371 F. Supp. 293; aff'd and rem'd for modification 521 F. 2d 325, 172 U.S. App. D.C. 224).

Judicial review

Decision of District of Columbia Council to close a street is not unreviewable; an action seeking equitable relief may be brought in the Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A. 2d 310).

Parties

Where sole issue in declaratory judgment action was whether the District of Columbia had authority to charge owners fair market value for alley space closed pursuant to The Street Readjustment Act of District of Columbia, Congress had delegated to the District complete authority to close United States alleys, a judgment rendered in the United States' absence would be entirely adequate and would not prejudice United States' interests and, because the funds at stake had been placed in escrow account in a bank, the judgment would run neither against nor be satisfied from United States' funds, the United States was not "indispensable party" within meaning of Federal Rule of Civil Procedure. *O. T. Carr, Jr., et al. v. District of Columbia et al.* (1974, 371 F. Supp. 293; aff'd and rem'd for modification 521 F. 2d 325, 172 U.S. App. D.C. 224).

Payment of compensation

The District of Columbia may not charge abutting property owners the fair market value of the public space owned by the District of Columbia which reverts to the owners when an alley is closed, unless an objection to the closing is made. *O. T. Carr, Jr., et al. v. District of Columbia et al.* (1974, 371 F. Supp. 293; aff'd and rem'd for modification 521 F. 2d 325, 172 U.S. App. D.C. 224).

When closing original United States property under the complete authority to close United States alleys delegated by Congress, the District of Columbia city council may, for the account of the United States, charge abutting property owners fair market value of the space closed. *Id.*

Fact that advantages accrued to the District of Columbia by the closing of an original United States alley did not preclude the District from adding conditions for the benefit and protection of the United States. *Id.*

The right of the District of Columbia city council to charge for United States property does not apply only when the District of Columbia closes a United States alley on its own initiative. *Id.*

Although District of Columbia Council referred only to Code provision which authorized acceptance of dedication of an alley in connection with the closing of an existing alley but which did not mention payment of money in its resolution closing an "original" alley owned by the United States, Council also proceeded under other applicable provisions of the Code and, under those other provisions, was authorized to collect money for the closing on behalf of the United States. *Calvin-Humphrey Corporation v. United States* (1973, 480 F. 2d 1323, 202 Ct. Cl. 519).

Decision that government of District of Columbia is not entitled to collect money from abutting property owners for the closing of an alley is confined strictly to alleys dedicated by developers and does not apply to an "original" alley, the title to which is in the United States. *Id.*

§ 7-402. Notice of intention to close public way—Hearing.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 7-403. Plats to be prepared showing public way intended to be closed—Approval conditional upon dedication of other property.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-404. Order for closing public ways—Notice—Effective if no objection within 30 days—Recordation of plats.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS**Administrative procedure**

Decision of District of Columbia Council, pursuant to the Street Readjustment Act, to close portion of street

and, once closed, to authorize the surveyor to convey title to the abutting landowners for development purposes did not constitute a "contested case" within meaning of the Administrative Procedure Act; in determining whether it should close the street the Council was exercising legislative discretion based on primarily legislative facts; also, Council's decision regarding compensation, though primarily adjudicatory, did not fall within the "contested case" definition since it was subject to trial de novo in Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A. 2d 310).

Interested party

Plaintiffs who contested closing of part of public alley but who were members of general public and not owners of property abutting alley were not "parties interested" within meaning of statutes providing that an order closing an alley becomes effective immediately if no written objection is made by any party interested within 30 days after service of order and requiring institution of an in rem proceeding for closing of an alley when an objection is filed by parties interested; thus, plaintiffs' filing of a formal written objection to alley closing did not require institution of in rem proceeding. *Metropolitan Washington Coalition for Clean Air v. Department of Economic Development et al.* (1973, 373 F. Supp. 1096).

Judicial review

Decision of District of Columbia Council to close a street is not unreviewable; an action seeking equitable relief may be brought in the Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A. 2d 310).

§ 7-405. Objections to closing public ways—Proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Judicial review

Decision of District of Columbia Council to close a street is not unreviewable; an action seeking equitable relief may be brought in the Superior Court. *Chevy Chase Citizens Association et al. v. District of Columbia Council* (D.C. App. 1974, 327 A. 2d 310).

§ 7-407. Abandonment of proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-408. Petition by property owners for closing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-409. Prior laws to remain in force.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—BRIDGES, VIADUCTS, AND SUBWAYS

§ 7-501. Control of bridges vested in Commissioner of the District of Columbia—Except Aqueduct Bridge.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-502. Construction and repair of bridges over railway and canal rights-of-way—Collection of cost.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-507. Highway Bridge—Maintenance cost—Street railways.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-511. Francis Scott Key Bridge—Railways—Approval by Secretary of the Army.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-514. Benning Bridge—Cost—Railways.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-520. Michigan Avenue Viaduct—Construction authorized—Cost.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-523. Subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road, extended—Cost.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-524. Calvert Street Bridge—Street railways.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-526. Washington Channel bridge and facilities—Construction, maintenance, etc.—Acquisition of land—Cooperation with agencies—Leases—Advisory Committee—Appropriations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—REPAIR AND CONSTRUCTION**§ 7-601. Repairs to streets, avenues, alleys, or sewers—Public notice—Lowest responsible bidder to be accepted—Rejection of bids—Subdivision of contracts.**

When any repairs of streets, avenues, alleys, or sewers within the District of Columbia are to be made, or when new pavements are to be substituted in place of those worn out, new ones laid, or new streets opened, sewers built, or any works the total cost of which shall exceed the sum of \$1,000, notice shall be given in one newspaper in Washington, but not elsewhere, unless the need for advertising outside the District shall have been specifically approved by the Mayor for proposals, with full specifications as to material for the whole or any portion of the works proposed to be done; and the lowest responsible proposal for the kind and character of pavement or other work which the Mayor of the District of Columbia shall determine upon shall in all cases be accepted: *Provided, however,* That the Mayor shall have the right, in his discretion, to reject all of such proposals: *Provided,* That work capable of being executed under a single contract shall not be subdivided so as to reduce the sum of money to be paid therefor to less than one thousand dollars. (June 11, 1878, 20 Stat. 105, ch. 180, § 5; Oct. 26, 1973, Pub. L. 93-140, § 25(c), 87 Stat. 509.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Oct. 26, 1973, amended section by striking "and if the total cost shall exceed \$5,000, then in one newspaper in each of the cities of New York, Philadelphia, and Baltimore also for one week," and inserting in lieu thereof: "but not elsewhere, unless the need for advertising outside the District shall have been specifically approved by the Commissioner".

APPROPRIATIONS

See note under § 1-226a.

CROSS REFERENCES

Advertising for proposals, see § 1-808.

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising, see § 1-809.

§ 7-602. Contracts—Unanimous consent of Commissioner required—Contracts to be copied into book.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-603. Pavement to be of best known materials—Bond of contractors—Liability for repairs.

No pavement shall be accepted nor any pavement laid except that of the best material of its kind known for that purpose, laid in the most substantial manner; and good and sufficient bonds to the District of Columbia shall be required (except when otherwise provided by section 1-305) from the contractors in a penal sum of not less than twenty-five per centum of the amount of the contract with sureties or a surety company to be approved by the Mayor of the District of Columbia guaranteeing that the terms of the contract shall be strictly and faithfully performed to the satisfaction of said Mayor; that the contractors shall promptly make payments to all persons supplying them labor and materials in the prosecution of the work provided for in such contracts; and that such work shall be kept in repair for a period of one year from the date of completion of said work; but no cash retent to guarantee such repair shall be held or required on such contracts. (June 11, 1878, 20 Stat. 106, ch. 180, § 5; Sept. 1, 1916, 39 Stat. 638, ch. 433.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

This section is part of section 5 of act June 11, 1878. Remainder of such section is classified to sections 1-212, 7-601, 7-602, 7-604, and 7-605.

This section is a composite of the credits cited in the history line. The parenthetical exception was inserted by the compilers in view of the provisions of § 1-805. The act of 1878 originally required contractors to keep new pavements or other new works in repair for 5 years, 10 per centum of the cost to be retained as additional security, such sum to be invested in United States or District of Columbia bonds, and the interest paid to the contractors.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

REPAIRS

The appropriation acts listed below contained the following proviso: "That in addition to the provision of existing law requiring contractors to keep new pavements in repair for a period of one year from the date of the completion of the work, the Commissioners shall further require that where repairs are necessary during the four years following the said one-year period, due to inferior work or defective materials, such repairs shall be made at the expense of the contractor, and the bond

furnished by the contractor shall be liable for such expense."

- 1959—Aug. 6, 1958, Pub. L. 85-594, § 1, 72 Stat. 509.
 1958—June 27, 1957, Pub. L. 85-61, § 1, 71 Stat. 204.
 1957—June 29, 1956, ch. 479, § 1, 70 Stat. 451.
 1956—July 5, 1955, ch. 272, § 1, 69 Stat. 259.
 1955—July 1, 1954, ch. 449, § 1, 68 Stat. 392.
 1954—July 31, 1953, ch. 299, § 1, 67 Stat. 290.
 1953—July 5, 1952, ch. 576, § 1, 66 Stat. 385.
 1952—Aug. 3, 1951, ch. 292, § 1, 65 Stat. 166.
 1951—July 18, 1950, ch. 467, § 1, 64 Stat. 347.
 1950—June 29, 1949, ch. 279, § 1, 63 Stat. 303.
 1949—June 19, 1948, ch. 555, § 1, 62 Stat. 553.
 1948—July 25, 1947, ch. 324, § 1, 61 Stat. 442.
 1947—July 9, 1946, ch. 544, § 1, 60 Stat. 518.
 1946—June 30, 1945, ch. 209, § 1, 59 Stat. 289.
 1945—June 28, 1944, ch. 300, § 1, 58 Stat. 526.
 1944—July 1, 1943, ch. 184, § 1, 57 Stat. 341.
 1943—June 27, 1942, ch. 452, § 1, 56 Stat. 455.
 1942—July 1, 1941, ch. 271, § 1, 55 Stat. 534.
 1941—June 12, 1940, ch. 333, 54 Stat. 307.
 1940—July 15, 1939, ch. 281, 53 Stat. 1037.
 1939—Apr. 4, 1938, ch. 62, 52 Stat. 189.
 1938—June 29, 1937, ch. 403, 50 Stat. 390.
 1937—June 23, 1936, ch. 726, 49 Stat. 1864.
 1936—June 14, 1935, ch. 241, 49 Stat. 350.
 1935—June 4, 1934, ch. 389, 48 Stat. 855.
 1934—June 16, 1933, ch. 93, 48 Stat. 230.
 1933—June 29, 1932, ch. 308, 47 Stat. 354.
 1932—Feb. 23, 1931, ch. 282, 46 Stat. 1387.
 1931—July 3, 1930, ch. 848, 46 Stat. 962.
 1930—Feb. 25, 1929, ch. 314, 45 Stat. 1273.
 1929—May 21, 1928, ch. 659, 45 Stat. 657.
 1928—Mar. 2, 1927, ch. 271, 44 Stat. 1308.
 1927—May 10, 1926, ch. 276, 44 Stat. 427.

CROSS REFERENCES

Contractors' bond, see §§ 1-804a to 1-806.

General limitation on power of Commissioner, see § 1-801.

Retention of percentage of cost to guarantee faithful performance, see § 1-807.

§ 7-604. Payments—Railway companies to pay portion of cost—Penalty for refusal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Duty to remove tracks

Transit company did not have responsibility of removing abandoned trolley tracks which constituted a continuing hazard for bicycle, motorcycle and automobile traffic within District of Columbia, but only had responsibility to pay cost of removal when incurred. *J. Joseph et al. v. District of Columbia et al.* (1973, 366 F. Supp. 757; aff'd 495 F. 2d 1075, 162 U.S. App. D.C. 19).

District of Columbia had duty of removing abandoned trolley tracks, which constituted a continuing hazard for bicycle, motorcycle and automobile traffic within District, and would be required to file firm plan for removing tracks within three years of such filing. *Id.*

§ 7-604a. Removal of street railway tracks—Provision for paving.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Duty to remove tracks

Transit company did not have responsibility of removing abandoned trolley tracks which constituted a continu-

ing hazard for bicycle, motorcycle and automobile traffic within District of Columbia, but only had responsibility to pay cost of removal when incurred. *J. Joseph et al. v. District of Columbia et al.* (1973 366 F. Supp. 757; aff'd 495 F. 2d 1075, 162 U.S. App. D.C. 19).

District of Columbia had duty of removing abandoned trolley tracks, which constituted a continuing hazard for bicycle, motorcycle and automobile traffic within District, and would be required to file firm plan for removing tracks within three years of such filing. *Id.*

§ 7-605. Water and gas mains, service pipes, and sewer connections to be laid before permanent improvements are made.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-607. Commissioner to submit schedules of streets to be improved in order of importance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-608. Improvement and repair of alleys and sidewalks, and construction of sewers and sidewalks under permit system—Hearing—Notice—Cost—Assessment, collection, liability for sale, deposit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Sidewalk—Construction

In claim that District of Columbia had discriminated in provision of municipal services, evidence established that discrimination in construction of sidewalks in the District of Columbia, if any had existed, no longer existed and that purported effects of past discrimination were being rectified by a major commitment of resources. *M. Burner et al. v. W. E. Washington et al.* (1975, 399 F. Supp. 44).

— Repairs

Municipality was under a duty to exercise reasonable care in maintaining its sidewalk, but that duty became secondary to the duty of the abutting landowner where the landowner was making a special use of the sidewalk for a driveway entrance to his gasoline station. *District of Columbia v. Texaco, Inc., et al.* (D.C. App. 1974, 324 A.2d 690).

There is a "special use" of a sidewalk by an abutter, such that the abutter is liable for injuries resulting from unsafe or dangerous conditions created by the use, where the abutter uses the sidewalk as a driveway entrance to his gasoline station and, as a result, causes an unsafe or dangerous conditions. *Id.*

§ 7-610. Service connections for water and sewer when street is about to be paved—Cost—Assessment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-612. Assessments for costs of paving streets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-613. Width of pavement of streets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-613a. Minor changes in roadway width.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-615. Cutting trenches in highways—Reservation or public space without permit prohibited—Inapplicable to public buildings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-618. Use of portable asphalt plant.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-620. Limitation on contracts of District Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-630. Collection of assessments—Interest—Advertising of intention to improve and hearing not required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-631. Protest of aggrieved property owner—Adjustment of assessment by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-632. Cancellation of prior assessments directed—Reassessment—Refund.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—STREET LIGHTING

§ 7-701. Street lighting—Rates for street lighting—Cost and maintenance of lighting facilities—Powers of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

RATES FOR STREET LIGHTING

Section 6 of the District of Columbia Appropriation Act, 1975 (Aug. 31, 1974, Pub. L. 93-405, 88 Stat. 827), provided:

"Appropriations in this Act shall not be available for the payment of rates for electric current for street lighting in excess of 2 cents per kilowatt-hour for current consumed."

Similar provisions (in addition to those referred to in the main edition) were contained in the following acts:

1974—Aug. 14, 1973, Pub. L. 93-91, § 6, 87 Stat. 309.

§ 7-703. Deductions for failure to provide required illumination—Testing facilities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-704. Contracts for gas and electric lighting not required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-705. Penalty for failure to furnish, erect, maintain, move, or discontinue street lamps.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-706. Extension of gas-mains for maintenance of street lamps—Cost.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-707. Regulating hours of lighting of street lamps.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-708. Washington Terminal Company to pay for certain street lighting.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-709. Railroads to pay for certain street lighting.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—REMOVAL OF SNOW AND ICE

Sec.

7-807. Appropriations.

§ 7-801. Snow and ice to be removed from sidewalks within fire limits by owner or occupant of abutting property.

NOTES TO DECISIONS

Liability

If snow or ice has been permitted to remain untreated on sidewalk or crosswalk and has formed into humps or ridges or other shapes of such size and location as to constitute a danger, aggravated over its original mere slipperiness, and unusual in comparisons with general conditions naturally prevalent throughout the city, and if condition has remained for period sufficient to give rise to constructive notice to municipal authorities, and opportunity for them to remedy it, municipality is liable for injuries of which dangerous condition is proximate cause. *District of Columbia v. R. Smith* (D.C. App. 1972, 297 A.2d 787).

§ 7-802. Removal by Commissioner from walks adjacent to public buildings—Making safe with sand or ashes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-805. Removal by Commissioner upon default by owner or occupant—Expense.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-807. Appropriations.

Notwithstanding any other provision of law, appropriations for the Department of Highways and Traffic and the Department of Environmental Services of the government of the District of Columbia shall be available for purposes of snow and ice removal when so ordered by the Commissioner of the District of Columbia. (Oct. 26, 1973, Pub. L. 93-140, § 14, 87 Stat. 507.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATION AUTHORIZATION

See note under § 1-226a.

Chapter 9.—RENTAL AND UTILIZATION OF PUBLIC SPACE

§ 7-902. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-903. Assessment and collection of rent from the United States, District of Columbia or foreign governments, not authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-904. Minor uses of public space without rental payments, authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-905. Regulations by District Council for rental of public space—Conditions—Provisions to be included in regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-906. Regulations to prescribe rental to be paid—Minimum rental to be paid under this title—Refunds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-907. Use of property subject to the requirements of section 7-117.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-908. Permits for use or construction of vaults—Agreement required of owner—Contents of agreement—Recording of a copy of agreement in office of Recorder of Deeds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

USE OF PUBLIC SPACE UNDER DUPONT CIRCLE

Act May 22, 1975, D.C. Law 1-4, 21 DCR 3947, provided:

"Section 101. *Short Title.* This Act may be cited as 'An Act To Authorize The Mayor Of The District of Columbia To Permit The Use Of Public Space Under Dupont Circle.'

"Section 102. *Statement of Purpose.* The Act would empower the Mayor to lease or grant revocable permits for the development of the abandoned trolley car tunnels under Dupont Circle and some of their multiple entrances, as unique commercial retail and entertainment mall areas. Development of this area with the passage of this Act will enhance the celebration of our Nation's bicentennial anniversary by its commercial and cultural impact as proposed by the plan.

"Section 103. That the Mayor of the District of Columbia is authorized and empowered in his discretion and after citizen participation under procedures established by the Mayor, to enter into leases of, or to grant revocable permits for the use of, public space under Dupont Circle, Northwest, in the District of Columbia, consisting of tunnels, stations, access passageways, appurtenances formerly maintained as a part of a street railway system, and to impose such terms and conditions, and to provide for the payment of such rents or fees as the Mayor may, in his discretion, deem to be necessary or desirable.

"Section 104. *Effective Date.* This Act shall become effective upon passage."

§ 7-910. Owners of property in which vaults are located to pay rents as fixed by District Council—Minimum rent—Waiver of rent under certain conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-911. Same; Annual payment of rent—Rental year—Interest charges for non-payment—Refunds—Deduction of expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-912. Commissioner authorized to order removal from vault under certain conditions—Failure to comply with order, a violation of this subchapter—Application to Superior Court for authority to enter upon property of owner—Liability of District and employees for damages—Service of process on owner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-913. Same; Notice to owner when vaults are dangerous—Commissioner's authority to make vaults safe and secure—District's expenses to be charged against private property of owner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-914. Authority to secure the payment of rents, interest and other charges—Delinquent charges to be levied as a tax—Payment of tax—Tax sale for delinquent taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-915. Vaults to be made available for utility construction or installation—Applicants to grant District certain rights—Superior Court authorized to permit Commissioner to enter upon premises—Damages—Service of process—Costs and expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-916. District Council not authorized to impose a rental charge for vaults abutting single or two family homes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-917. District Council authorized to promulgate regulations to carry out the purposes of this subchapter—Effective date of regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-918. Insurance requirements—District and its employees to be included in insurance policies—United States and District Governments exempt from insurance requirements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-920. Penalties for violations—Additional penalties may be prescribed by District Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-921. Deposit of rents collected.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-925. Effective dates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-941. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-942. Commissioner's authority with respect to airspace—Agreements with Federal Government.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-943. Terms and conditions to be included in airspace leases.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-944. Commissioner authorized to execute airspace leases under certain conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-945. Cost of removal or relocation of public or private facilities—Commissioner's approval required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-948. Deposit of rents, fees, taxes, assessments, sewer and water charges—Payment of expenditures.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-949. Restoration of airspace to its prior condition upon expiration or termination of lease—Cost of restoration.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-950. Regulations by District Council, authorized—Penalties for violating regulations—Notice of violation—Suit to enjoin continuing violations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-951. Federal and District Governments authorized to construct airspace structures under certain conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—REAL ESTATE SALE OR RENT SIGNS**§ 7-1001. Signs on sidewalk or parking prohibited—
Number of signs—Removal—Penalties.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—BARBED-WIRE FENCES**§ 7-1102. Construction or maintenance outside fire limits.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1105. Notice by publication—Removal by inspector of buildings—Cost, assessment.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

Chapter 12.—MISCELLANEOUS**§ 7-1201. Jurisdiction over MacArthur Boulevard transferred to District Council—Abutting property owners—Assessment—Application of municipal laws.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1205. Denomination of streets as "business streets."**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1210. Sidings may be laid by Baltimore and Potomac Railroad Company—Authority of Council.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1211. Certain railroad sidings authorized.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1212. Baltimore and Ohio Railroad Company authorized to extend tracks and maintain additional stations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

**§ 7-1214. Streets to be under or over railroad tracks—
Cost of opening streets—Maintenance.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1215. Subways and viaducts to eliminate grade crossings authorized in discretion of Commissioner—Cost.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

**§ 7-1218. Branch tracks, spurs, or sidings authorized—
Plats or charts kept on file.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1219. Extensions through public grounds authorized—Exceptions—Approval of Fine Arts Commission.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1220. Authority of Commissioner under § 7-1215 not affected.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1222. Company to pay portion of cost of paving or repairing streets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1226. Plans to be approved by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1227. Grade crossings subject to approval of Commissioner—Overhead bridge.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1228. Authority of Commissioner not abridged.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1230. Electrification of existing steam-railroad lines—Structures, equipment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1232. Construction of conduit systems—Government use of three ducts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1233. Jurisdiction not abridged.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1235. Employment of temporary special and technical employees—Report by Commissioner—Tenure of employment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1236. Employment of temporary laborers and mechanics—Per diem rate of pay.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1237. Employment of horses, horse-drawn vehicles, and motortrucks—Report by Commissioner—Temporary use under special conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 7-1238. Employment of personnel and equipment to execute work payable from miscellaneous trust fund deposits—Delegation of hiring authority by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 13.—WASHINGTON NATIONAL AIRPORT

§ 7-1302. Powers and duties of Administrator—Rules and regulations.

NOTES TO DECISIONS

Criminal offenses

Assimilative Crimes Act did not authorize action of administrator of Federal Aviation Administration in selectively incorporating certain state offenses in regulation covering Washington National Airport and in substituting regulatory penalties for those prescribed by state legislation. *United States v. P. M. Robinson, Jr.* (1974, 495 F. 2d 30, 4th Cir.).

Where citation charging defendant with "disorderly conduct—abusive language" under Virginia law while defendant was in Washington National Airport, charged an offense which could have fallen within any one of three Virginia statutes and magistrate's statement recited that defendant had been found guilty of violating regulation of Administrator of Federal Aviation Administration and cited no Virginia statutory reference, charge, and conviction were so vague and ambiguous as to violate rudimentary concepts of due process and the Sixth Amendment. *Id.*

§ 7-1304. Authority to make arrests—Carrying of firearms—Park Police patrol.

CROSS REFERENCES

Arrest without warrant, generally, see § 23-581.

Park Police authority to arrest on or within Federal reservations in environs of District of Columbia, see § 4-209.

Chapter 14.—PUBLIC AIRPORT

Sec.

7-1413. Disposition of money recovered from pool and fountain.

§ 7-1408. Authority to make arrests—Park Police patrol.

CROSS REFERENCES

Arrest without warrant, generally, see § 23-581.

Park Police authority to arrest on or within Federal reservation in environs of District of Columbia, see § 4-209.

§ 7-1413. Disposition of money recovered from pool and fountain.

Money hereafter recovered from the pool and fountain at Dulles International Airport shall not be subject to the Act of June 30, 1949, as amended (40 U.S.C. 484(m), 485(a)), and may be given to a non-profit organization which, in the determination of the Administrator of the Federal Aviation Agency, promotes and provides for the welfare of travelers in

air commerce. (Aug. 30, 1964, Pub. L. 88-507, title I, § 101, 78 Stat. 646.)

CODIFICATION

Section is also classified to 40 U.S.C. 484 note.

Chapter 15.—POTOMAC RIVER BASIN COMPACT

§ 7-1502. Consent of Congress to amended compact—Authority of Commissioner of the District of Columbia—Rights reserved by Congress.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 8.—PARKS AND PLAYGROUNDS

Chapter 1.—PARKS AND PLAYGROUNDS

§ 8-108. Park system—Control—Inclusions—Exclusions, improvements, parking spaces—"Business streets"—Conditions requisite.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-110. Street parking.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-111. Small parks at certain street intersections.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-114. Portion of Water Street made part of park system—Consent of owners.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-115. Transfer of jurisdiction over property between United States and District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-117. Whitehaven Parkway—Boundaries of at Huidekoper Place to be adjusted.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-118. Whitehaven Parkway—Federal property in exchange.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-119. Whitehaven Parkway—Exchange authorized with property owners.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-120. Whitehaven Parkway—Plats to be prepared.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-126. Jurisdiction over reservation No. 185.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-127. Use of spaces or reservations for widening roadways.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-130. Part of Washington Aqueduct for playground purposes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-131. Authority to make rules and regulations for playgrounds and recreation centers.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-132. Volunteer aid for playgrounds.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-135. Transfers of jurisdiction between Director and District Council—Change of official maps.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-136. Jurisdiction of reservation No. 32 transferred to Commissioner.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-137. Jurisdiction of reservation No. 290 transferred to Commissioner.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-138. Jurisdiction of reservation No. 8 transferred to Commissioner.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-139. Public convenience stations—Establishment—Location—Control transferred to Commissioner.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-140. Public convenience stations—Authority to make rules, regulations, and charges.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-141. Part of reservation 13 transferred to Commissioner for use as burial ground.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-142. Site of former Georgetown Reservoir transferred to jurisdiction of Commissioner.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-143. Authority to make regulations for care of public grounds.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-151. Rock Creek Park—Injury or diminution of the flow of water in Rock Creek.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-158. Parkway connecting Potomac Park with Zoological and Rock Creek Parks—Reimbursement of part of cost to United States.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-162. Glover Parkway and Children's Playground.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-168. Public bathing beach authorized.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-170. Bathing pools and beaches—Operation—Fees.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—RECREATION BOARD**§ 8-202. Composition of Board—Qualifications—Tenure.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-208. Determination of general policy—Supervision of expenditures.**NOTES TO DECISIONS****Discrimination in services provided**

In claim that District of Columbia had discriminated in provision of municipal services, evidence failed to establish a prima facie case of discrimination in recreational services furnished by District of Columbia. *M. Burner et al. v. W. E. Washington et al.* (1975, 399 F. Supp. 44).

§ 8-209. Superintendent of Recreation—Appointment and duties—Qualifications—Other employees—Compensation—Volunteer services—Night differential for nonregularly scheduled work.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-212. Annual budget.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-213. Annual report.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-214. Transfer of functions of Community Center and Playgrounds Department—Transfer of unexpended funds.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-216. Powers of Board of Education, Commissioner of District of Columbia, or National Park Service unabridged.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 8-217. Agreements for maintenance and improvement of playgrounds, etc., under control of Board of Education, Commissioner of District of Columbia, or National Park Service—Transfer of equipment and personnel.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

Sec.

9-146. National Capital Service Area.

Chapter 1.—REGULATING PROVISIONS

§ 9-101. Wharf property—Control by Commissioner of District—Authority to make rules and regulations—Jurisdiction of Chief of Engineers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-102. Authority to make rules and regulations for wharf property—Leases—Rents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-118. Capitol grounds area.

The United States Capitol Grounds shall comprise all squares, reservations, streets, roadways, walks, and other areas as defined on a map entitled "Map showing areas comprising United States Capitol Grounds", dated June 25, 1946, approved by the Architect of the Capitol and recorded in the Office of the Surveyor of the District of Columbia in book 127, page 8, including all additions added thereto by law subsequent to June 25, 1946, and the jurisdiction and control over the United States Capitol Grounds, heretofore vested by law in the Architect of the Capitol, is hereby extended to the entire area of the United States Capitol Grounds, and the Architect of the Capitol shall be responsible for the maintenance and improvement thereof, including those streets and roadways in said United States Capitol Grounds as shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia, except that the Mayor of the District of Columbia shall be responsible for the maintenance and improvement of those portions of the following streets which are situated between the curblines thereof: Constitution Avenue from First Street N.E. to Second Street N.W., First Street from D Street N.E. to D Street S.E., D Street from First Street S.E. to Canal Street S.W., and First Street from the north side of Louisiana Avenue to the intersection of C Street and Canal Street S.W.: *Provided*, That the Mayor of the District of Columbia shall be permitted to enter any part of said United States Capitol Grounds for the purpose of repairing or maintaining or, subject to the approval of the Architect of the Capitol, for the purpose of con-

structing or altering, any utility service of the District of Columbia government. (July 31, 1946, 60 Stat. 718, ch. 707, § 1; Oct. 20, 1967, Pub. L. 90-108, § 1(a), 81 Stat. 275; Dec. 24, 1973, Pub. L. 93-198, title VII, § 739(g) (7), 87 Stat. 829.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section is also classified to 40 U.S.C. § 193a.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section by deleting "": *Provided*, That those streets and roadways in said United States Capitol Grounds shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia shall continue under such jurisdiction and control, and said Commissioners shall be responsible for the maintenance and improvement thereof: *Provided further*, and inserting in lieu thereof a comma and the following: "including those streets and roadways in said United States Capitol Grounds as shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia, except that the Commissioner of the District of Columbia shall be responsible for the maintenance and improvement of those portions of the following streets which are situated between the curblines thereof: Constitution Avenue from First Street N.E. to Second Street N.W., First Street from D Street N.E. to D Street S.E., D Street from First Street S.E. to Canal Street S.W., and First Street from the north side of Louisiana Avenue to the intersection of C Street and Canal Street S.W.: *Provided*,".

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the amendment to this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

EXTENSION OF UNITED STATES CAPITOL GROUNDS

Section 739(g) (3) of Act Dec. 24, 1973, Pub. L. 93-198, title VII, 87 Stat. 828 [effective Jan. 2, 1975, title IV of Pub. L. 93-198 having been accepted by a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum conducted May 8, 1974], provided that section 1 of the Act of July 31, 1946, as amended [D.C. Code, § 9-118] is hereby amended to include within the definition of the United States Capitol Grounds, the following streets: "Independence Avenue from the west curb of First Street S.E. to the east curb of First Street S.W., New Jersey Avenue S.E. from the south curb of Independence Avenue to the north curb of D Street S.E., South Capitol Street from the south curb of Independence Avenue to the north curb of D Street; Delaware Avenue S.W. from the south curb of C Street S.W. to the north curb of D Street S.W., C Street from the west curb of First Street S.E. to the intersection of First and Canal Streets, S.W., D Street from the west curb of First Street S.E. to the intersection of Canal Street and Delaware Avenue S.W., that part of

First Street lying west of the outer face of the curb of the sidewalk on the east side thereof from D Street, N.E. to D Street S.E., that part of First Street within the east and west curblines thereof extending from the north side of Pennsylvania Avenue N.W. to the intersection of C Street and Canal Street S.W., including the two circles within such area. Nothing in this section shall be construed as repealing, or otherwise altering, modifying, affecting, or superseding those provisions of law in effect on the date immediately preceding the effective date of title IV of this Act [Jan. 2, 1975] vesting authority in the United States Supreme Court police and Library of Congress police to make arrests in adjacent streets, including First Street N.E. and First Street S.E.”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-163, 1-1002, 9-118b, 9-125, 9-126, 9-127, 9-129, 9-130, 9-132, 9-146.

§ 9-118b. Use of part of the United States Capitol Grounds as a recreation area.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-119. Public travel in and occupancy of Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-118b, 9-125, 9-126, 9-127 to 9-130, 9-132, 9-146.

§ 9-120. Obstruction of roads in Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-118b, 9-125, 9-126, 9-127 to 9-130, 9-132, 9-146.

§ 9-121. Sale of goods in Capitol Grounds—Advertising—Begging.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-118b, 9-125, 9-126, 9-127 to 9-130, 9-132, 9-146.

§ 9-122. Removal or injury of property in Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-118b, 9-125, 9-126, 9-127 to 9-130, 9-132, 9-146.

§ 9-123. Unlawful conduct on Capitol Grounds or in buildings.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-118b, 9-125, 9-126, 9-127 to 9-130, 9-132, 9-146.

NOTES TO DECISIONS

Constitutional rights

Where police roped off area for group to assemble while their petition was presented to Senate, and group was not arrested immediately upon blocking of corridor but only after chief of capitol police had again requested that they move to area cordoned off for them, their First Amendment rights were not unduly burdened, and application of statute making it unlawful to wilfully and knowingly obstruct or impede passage through or within any capitol building was not violative of their rights under such amendment, *A. J. Arshack v. United States* (D.C. App. 1974, 321 A.2d 845).

Construction

Such statutes as federal statute making it unlawful for any person or group of persons wilfully and knowingly to obstruct or impede passage through or within any capitol building may be applied to symbolic conduct, i.e., conduct which, if done at another place, might fall within First

Amendment protection. *A. J. Arshack v. United States* (D.C. App. 1974, 321 A.2d 845).

Instructions

In prosecution under statute making it unlawful for any person or group of persons wilfully and knowingly to obstruct or impede passage through or within any capitol building, court did not err in refusing to give requested instruction, essence of which was jury nullification and would have made jurors judges of the law as well as facts. *A. J. Arshack v. United States* (D.C. App. 1974, 321 A.2d 845).

Court did not err in refusing requested instruction which would require specific intent to cause obstruction or impediment, where court instead gave instruction defining terms “wilful” and “knowingly” and where, under evidence, defendants had been amply warned that they were not to impede passage in corridor and that they were in violation of the law when they sat and lay down and would be arrested if they did not move into area cordoned off for their use. *Id.*

Court properly refused instruction which, in effect, would have excused defendants on ground that they had acted in accordance with dictates of their conscience and if their actions were reasonably believed to be justified by obligations imposed by international law. *Id.*

Purpose

Purpose of federal statute making it unlawful for any person or group of persons wilfully and knowingly to obstruct or impede passage through or within any capitol building is to permit Congress to carry out People's business unhindered by serious disruption. *A. J. Arshack v. United States* (D.C. App. 1974, 321 A.2d 845).

§ 9-124. Parades or assemblages and displays forbidden in Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-125, 9-126, 9-127 to 9-130, 9-132, 9-146.

§ 9-125. Prosecution and punishment of offenses—General laws not superseded.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-118b, 9-126, 9-127, 9-129, 9-130, 9-132, 9-146.

§ 9-126. Policing of Capitol Buildings and Grounds—Powers of Capitol Police—Arrests by Metropolitan Police.

The Capitol Police shall police the United States Capitol Buildings and Grounds under the direction of the Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, and shall have the power to enforce the provisions of sections 9-118, 9-119 to 9-126, 9-127 to 9-132 and regulations promulgated under section 9-131 and to make arrests within the United States Capitol Buildings and Grounds for any violations of any law of the United States, of the District of Columbia, or of any State, or any regulation promulgated pursuant thereto: *Provided*, That the Metropolitan Police force of the District of Columbia are hereby authorized to make arrests within the United States Capitol Buildings and Grounds for any violations of any such laws or regulations, but such authority shall not be construed as authorizing the Metropolitan Police force, except with the consent or upon the request of the Capitol Police Board, to enter such buildings to make arrests in response to complaints or to serve warrants or to patrol the United States Capitol Buildings and Grounds. For the purpose of this section, the word “grounds” shall include the House Office Building

parking area. (July 31, 1946, 60 Stat. 719, ch. 707, § 9; Dec. 24, 1973, Pub. L. 93-198, title VII, § 739(g) (4), (5), 87 Stat. 829.)

CODIFICATION

Section is also classified to 40 U.S.C. § 212a.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence by inserting “, of the District of Columbia,” immediately after “law of the United States”; and by striking out at the end thereof “, with the exception of the streets and roadways shown on the map referred to in section 9-118 as being under the jurisdiction and control of the Commissioners of the District of Columbia”.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the amendment to this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-118b, 9-125, 9-127, 9-129, 9-130, 9-132, 9-146.

§ 9-126a. Detail of personnel from Metropolitan Police to Capitol Police Board—Duties and status of detailed personnel.

The Mayor of the District of Columbia is authorized and directed to make such details [detail of personnel from Metropolitan Police Force to Capitol Police Board] upon the request of the Board. Personnel so detailed shall, during the period of such detail, serve under the direction and instructions of the Board and are authorized to exercise the same authority as members of such Metropolitan Police and members of the Capitol Police and to perform such other duties as may be assigned by the Board. Reimbursement for salaries and other expenses of such detail personnel shall be made to the Government of the District of Columbia, and any sums so reimbursed shall be credited to the appropriation or appropriations from which such salaries and expenses are payable and shall be available for all the purposes thereof: *Provided*, That any person detailed under the authority of this section or under similar authority in the Legislative Branch Appropriation Act, 1942, and the Second Deficiency Appropriation Act, 1940, from the Metropolitan Police of the District of Columbia shall be deemed a member of such Metropolitan Police during the period or periods of any such detail for all purposes of rank, pay, allowances, privileges, and benefits to the same extent as though such detail had not been made, and at the termination thereof any such person shall have a status with respect to rank, pay, allowances, privileges, and benefits which is not less than the status of such person in such police at the end of such detail. (July 25, 1975, Pub. L. 94-59, § 101, 89 Stat. 284.)

REFERENCES IN TEXT

The Second Deficiency Appropriation Act, 1940 and the Legislative Branch Appropriation Act, 1942 are set out in 54 Stat. 629 and 55 Stat. 456, respectively.

CODIFICATION

The provisions of this section were taken from the Legislative Appropriation Act for 1976 and are contained in Pub. L. 94-59, 89 Stat. 284, under the heading “Capitol

Police Board”. The portions in brackets were inserted by the codifiers for the sake of clarity.

SIMILAR PROVISIONS

Provisions similar to those in this section are contained in the following legislative appropriation acts and in a number of earlier appropriation acts:

1975—Aug. 13, 1974, Pub. L. 93-371, § 101, 88 Stat. 434.
1974—Nov. 1, 1973, Pub. L. 93-145, § 101, 87 Stat. 538.
1973—July 10, 1972, Pub. L. 92-342, § 101, 86 Stat. 440.
1972—July 9, 1971, Pub. L. 92-51, § 101, 85 Stat. 135.
1971—Aug. 18, 1970, Pub. L. 91-382, § 101, 84 Stat. 816.
1970—Dec. 12, 1969, Pub. L. 91-145, § 101, 83 Stat. 349.
1969—July 23, 1968, Pub. L. 90-417, § 101, 82 Stat. 406.
1968—July 28, 1967, Pub. L. 90-57, § 101, 81 Stat. 134.

§ 9-127. Employees in Capitol or Capitol Grounds to assist authorities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-118b, 9-125, 9-126, 9-129, 9-130, 9-132, 9-146.

§ 9-128. Suspension of prohibition against use of Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-118b, 9-124 to 9-126, 9-127, 9-129, 9-130, 9-132, 9-146.

§ 9-129. Capitol Police Board power to suspend prohibitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-118b, 9-124 to 9-126, 9-127, 9-130, 9-132, 9-146.

§ 9-130. Concerts on Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-118b, 9-125, 9-126, 9-127, 9-129, 9-132, 9-146.

§ 9-131. Traffic regulations by Capitol Police Board—Penalties—Prosecutions.

(a) The Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, shall have exclusive charge and control of the regulation and movement of all vehicular and other traffic, including the parking and impounding of vehicles and limiting the speed thereof, within the United States Capitol Grounds; and said Board is hereby authorized and empowered to make and enforce all necessary regulations therefor and to prescribe penalties for violation of such regulations, such penalties not to exceed a fine of \$300 or imprisonment for not more than ninety days. Notwithstanding the foregoing provisions of this section those provisions of chapters 3 and 6 of title 40, for the violation of which specific penalties are provided in said chapters, shall be applicable to the United States Capitol Grounds. Prosecutions for violation of such regulations shall be in the Superior Court of the District of Columbia, upon information by the Corporation Counsel of the District of Columbia or any of his assistants.

* * * * *

(As amended Dec. 24, 1973, Pub. L. 93-198, title VII, § 739(g) (6), 87 Stat. 829.)

CODIFICATION

Section is also classified to 40 U.S.C. § 212b.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence of subsec. (a) by striking out “, except on those streets and roadways shown on the map referred to in section 9-118 as being under the jurisdiction and control of the Commissioners of the District of Columbia” immediately following “United States Capitol Grounds”.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the amendment to this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9-118b, 9-125, 9-126, 9-127, 9-129, 9-130, 9-132, 9-146.

§ 9-132. Definitions.

REFERENCE IN TEXT

Section 901(3) of title 15, United States Code, referred to in par. (2), was repealed by Act June 19, 1968, Pub. L. 90-351, § 906, 82 Stat. 234. The regulation of firearms is now covered by chapter 44 (§ 921 et seq.) of title 18, United States Code.

Section 121 of title 50, United States Code, referred to par. (4), was repealed by Act Oct. 15, 1970, Pub. L. 91-452, § 1106(a), 84 Stat. 960. The regulation of explosives is now covered by chapter 40 (§ 841 et seq.) of title 18, United States Code.

CODIFICATION

Section is comprised of subsection (a) of section 16 of act of July 31, 1946. Subsection (b) of section 16 is set out as a note under section 9-118. Section is also classified to 40 U.S.C. § 193m.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-163, 1-1002, 9-118b, 9-125, 9-126, 9-127, 9-129, 9-130, 9-146.

§ 9-133. District of Columbia buildings—Control of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-134. Designation of employees to protect life and property outside the District—Powers of arrest—Weapons and uniforms.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-135. Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-137. Acceptance of collateral for appearance before United States Commissioner—Deposit of collateral.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-138. Agreements with States—Charges for services.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-139. Tunnel, location of under Capitol and Botanic Garden grounds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-140. Approval of Architect of Capitol required—Prescription of conditions by him—Commissioner authorized to use certain areas for tunnel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-141. Right, title and interest to grounds used for tunnel to remain in the United States—Jurisdiction and responsibility for tunnel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-144. Architect authorized to convey to Commissioner of the District of Columbia certain grounds for construction of Innerloop Freeway System—Jurisdiction over grounds conveyed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-145. Commissioner authorized to use certain area bounded by Fourth Street, Pennsylvania Avenue, Third Street, and North Mall Drive Northwest, for tunnel—Conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-146. National Capital Service Area.

(a) There is established within the District of Columbia the National Capital Service Area which shall include, subject to the following provisions of this section, the principal Federal monuments, the White House, the Capitol Building, the United States Supreme Court Building, and the Federal executive, legislative, and judicial office buildings located adjacent to the Mall and the Capitol Building, and is more particularly described in subsection (f).

(b) There is established in the Executive Office of the President the National Capital Service Director who shall be appointed by the President. The President, through the National Capital Service Director, shall assure that there is provided, utilizing District of Columbia governmental services to the extent practicable, within the area specified in subsection (a) and particularly described in subsection (f), adequate fire protection and sanitation services. Except with respect to that portion of the National Capital Service Area comprising the United States Capitol Buildings and Grounds as defined in sections 9-118 and 9-132, the United States Supreme Court Building and Grounds as defined in section 11 of the Act of August 18, 1949, as amended (40 U.S.C. 13p), and the Library of Congress Buildings and Grounds as defined in section 11 of the Act of August 4, 1950, as amended (2 U.S.C. 167j), the National Capital Service Director shall assure that there is provided within the remainder of such area specified in subsection (a) and subsection (f), adequate police protection and maintenance of streets and highways.

(c) The National Capital Service Director shall be entitled to receive compensation at the maximum rate as may be established from time to time for level IV of the Executive Schedule of section 5314 of title 5 of the United States Code. The Director may appoint, subject to the provisions of title 5 of the United States Code governing appointments in the competitive service, and fix the pay of, in accordance with the provisions of chapter 51 and subchapter 3¹ of chapter 53 of such title relating to classification and General Schedule pay rates, such personnel as may be necessary.

(d) [This subsection contained an amendment of section 39-603, and is reflected therein.]

(e) (1) Within one year after January 2, 1975, the President is authorized and directed to submit to the Congress a report on the feasibility and advisability of combining the Executive Protective Service and the United States Park Police within the National Capital Service Area, and placing them under the National Capital Service Director.

(2) Such report shall include such recommendations, including recommendations for legislative and executive action, as the President deems necessary in carrying out the provisions of paragraph (1) of this subsection.

(f) (1) (A) The National Capital Service Area referred to in subsection (a) is more particularly described as follows:

Beginning at that point on the present Virginia-District of Columbia boundary due west of the northernmost point of Theodore Roosevelt Island and running due east to the eastern shore of the Potomac River;

thence generally south along the shore at the mean high water mark to the northwest corner of the Kennedy Center;

thence east along the north side of the Kennedy Center to a point where it reaches the E Street Expressway;

thence east on the expressway to E Street Northwest and thence east on E Street Northwest to Eighteenth Street Northwest;

thence south on Eighteenth Street Northwest to Constitution Avenue Northwest;

thence east on Constitution Avenue to Seventeenth Street Northwest;

thence north on Seventeenth Street Northwest to Pennsylvania Avenue Northwest;

thence east on Pennsylvania Avenue to Jackson Place Northwest;

thence north on Jackson Place to H Street Northwest;

thence east on H Street Northwest to Madison Place Northwest;

thence south on Madison Place Northwest to Pennsylvania Avenue Northwest;

thence east on Pennsylvania Avenue Northwest to Fifteenth Street Northwest;

thence south on Fifteenth Street Northwest to Pennsylvania Avenue Northwest;

thence southeast on Pennsylvania Avenue Northwest to John Marshall Place Northwest;

thence north on John Marshall Place Northwest to C Street Northwest;

thence east on C Street Northwest to Third Street Northwest;

thence north on Third Street Northwest to D Street Northwest;

thence east on D Street Northwest to Second Street Northwest;

thence south on Second Street Northwest to the intersection of Constitution Avenue Northwest and Louisiana Avenue Northwest;

thence northeast on Louisiana Avenue Northwest to North Capitol Street;

thence north on North Capitol Street to Massachusetts Avenue Northwest;

thence southeast on Massachusetts Avenue Northwest so as to encompass Union Square;

thence following Union Square to F Street Northeast;

thence east on F Street Northeast to Second Street Northeast;

thence south on Second Street Northeast to D Street Northeast;

thence west on D Street Northeast to First Street Northeast;

thence south on First Street Northeast to Maryland Avenue Northeast;

¹ So in original. Probably should be "subchapter III".

thence generally north and east on Maryland Avenue to Second Street Northeast;

thence south on Second Street Northeast to C Street Southeast;

thence west on C Street Southeast to New Jersey Avenue Southeast;

thence south on New Jersey Avenue Southeast to D Street Southeast;

thence west on D Street Southeast to Canal Street Parkway;

thence southeast on Canal Street Parkway to E Street Southeast;

thence west on E Street Southeast to the intersection of Canal Street Southwest and South Capitol Street;

thence northwest on Canal Street Southwest to Second Street Southwest;

thence south on Second Street Southwest to Virginia Avenue Southwest;

thence generally west on Virginia Avenue to Third Street Southwest;

thence north on Third Street Southwest to C Street Southwest;

thence west on C Street Southwest to Sixth Street Southwest;

thence north on Sixth Street Southwest to Independence Avenue;

thence west on Independence Avenue to Twelfth Street Southwest;

thence south on Twelfth Street Southwest to D Street Southwest;

thence west on D Street Southwest to Fourteenth Street Southwest;

thence south on Fourteenth Street Southwest to the middle of the Washington Channel;

thence generally south and east along the mid-channel of the Washington Channel to a point due west of the northern boundary line of Fort Lesley McNair;

thence due east to the side of the Washington Channel;

thence following generally south and east along the side of the Washington Channel at the mean high water mark, to the point of confluence with the Anacostia River, and along the northern shore at the mean high water mark to the northern most point of the Eleventh Street Bridge;

thence generally south and east along the northern side of the Eleventh Street Bridge to the eastern shore of the Anacostia River;

thence generally south and west along such shore at the mean high water mark to the point of confluence of the Anacostia and Potomac Rivers;

thence generally south along the eastern shore at the mean high water mark of the Potomac River to the point where it meets the present southeastern boundary line of the District of Columbia;

thence south and west along such southeastern boundary line to the point where it meets the present Virginia-District of Columbia boundary;

thence generally north and west up the Potomac River along the Virginia-District of Columbia boundary to the point of beginning.

(B) Where the area in paragraph (1) is bounded by any street, such street, and any sidewalk thereof, shall be included within such area.

(2) Any Federal real property affronting or abutting, as of December 24, 1973, the area described in paragraph (1) shall be deemed to be within such area.

(3) For the purposes of paragraph (2), Federal real property affronting or abutting such area described in paragraph (1) shall—

(A) be deemed to include, but not limited to, Fort Lesley McNair, the Washington Navy Yard, the Anacostia Naval Annex, the United States Naval Station, Bolling Air Force Base, and the Naval Research Laboratory; and

(B) not be construed to include any area situated outside of the District of Columbia boundary as it existed immediately prior to December 24, 1973, nor be construed to include any portion of the Anacostia Park situated east of the northern side of the Eleventh Street Bridge, or any portion of the Rock Creek Park.

(g) (1) Subject to the provisions of paragraph (2) of this subsection, the President is authorized and directed to conduct a survey of the area described in this section in order to establish the proper metes and bounds of such area, and to file, in such manner and at such place as he may designate, a map and a legal description of such area, and such description and map shall have the same force and effect as if included in this Act, except that corrections of clerical, typographical and other errors in any such legal descriptions and map may be made. In conducting such survey, the President shall make such adjustments as may be necessary in order to exclude from the National Capital Service Area any privately owned properties, and buildings and adjacent parking facilities owned by the District of Columbia government.

(2) In carrying out the provisions of paragraph (1) of this subsection, the President shall, to the extent that such survey, legal description, and map involves areas comprising the United States Capitol Buildings and Grounds as defined in sections 9-118 and 9-132, and other buildings and grounds under the care of the Architect of the Capitol, consult with the Architect of the Capitol.

(3) [This paragraph contained an amendment of section 1 of Act July 31, 1946, as amended (D.C. Code, § 9-118), and is set out as a note under § 9-118.]

(4) [This paragraph contained an amendment of section 9-126, and is reflected therein.]

(5) [This paragraph contained an amendment of section 9-126, and is reflected therein.]

(6) [This paragraph contained an amendment of section 9-131, and is reflected therein.]

(7) [This paragraph contained an amendment of section 9-118, and is reflected therein.]

(8) [This paragraph contained an amendment of 40 U.S.C. 13n, and is reflected therein.]

(9) [This paragraph contained an amendment of 2 U.S.C. 167h, and is reflected therein.]

(h) (1) Except to the extent specifically provided by the provisions of this section, and amendments

made by this section, nothing in this section shall be applicable to the United States Capitol Buildings and Grounds as defined in sections 9-118 and 9-132, or to any other buildings and grounds under the care of the Architect of the Capitol, the United States Supreme Court Building and Grounds as defined in section 11 of the Act of August 18, 1949, as amended (40 U.S.C. 13p), and the Library of Congress Buildings and Grounds as defined in section 11 of the Act of August 4, 1950, as amended (2 U.S.C. 167j), and except to the extent herein specifically provided, including amendments made by this section, nothing in this section shall be construed to repeal, amend, alter, modify, or supersede any provision of sections 9-118, 9-119 to 9-126, 9-127 to 9-132, or any other of the general laws of the United States or any of the laws enacted by the Congress and applicable exclusively to the District of Columbia, or any rule or regulation promulgated pursuant thereto, in effect on the date immediately preceding January 2, 1975, pertaining to said buildings and grounds, or any existing authority, with respect to such buildings and grounds, vested by law, or otherwise, on such date immediately preceding January 2, 1975, in the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, or the Librarian of Congress.

(2) Notwithstanding the foregoing provision of this section, any of the services and facilities authorized by this Act to be rendered or furnished (including maintenance of streets and highways, and services under section 1-826) shall, as far as practicable, be made available to the Senate, the House of Representatives, the Congress, or any committee or commission or board thereof, the Architect of the Capitol, or any other officer of the legislative branch vested by law or otherwise on such date immediately preceding January 2, 1975, with authority over such buildings and grounds, the Chief Justice of the United States, the Marshal of the Supreme Court of the United States, and the Librarian of Congress, upon their request, and, if payment would be required for the rendition or furnishing of a similar service or facility to any other Federal agency, payment therefor shall be made by the recipient thereof, upon presentation of proper vouchers, in advance or by reimbursement (as may be agreed upon by the parties rendering and receiving such services).

(i) Except to the extent otherwise specifically provided in the provisions of this section, and amendments made by this section, all general laws of the United States and all laws enacted by the Congress and applicable exclusively to the District of Columbia, including regulations and rules promulgated pursuant thereto, in effect on the date immediately preceding January 2, 1975, and which, on such date immediately preceding January 2, 1975, are applicable to and within the areas included within the National Capital Service Area pursuant to this section shall, on and after January 2, 1975,

continue to be applicable to and within such National Capital Service Area in the same manner and to the same extent as if this section had not been enacted, and shall remain so applicable until such time as they are repealed, amended, altered, modified, or superseded, and such laws, regulations and rules shall thereafter be applicable to and within such area in the manner and to the extent so provided by any such amendment, alteration, or modification.

(j) In no case shall any person be denied the right to vote or otherwise participate in any manner in any election in the District of Columbia solely because such person resides within the National Capital Service Area. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 739, 87 Stat. 825.)

REFERENCE IN TEXT

"This Act", referred to in subs. (g) (1) and (h) (2), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

CODIFICATION

In subsec. (e) (1), "January 2, 1975" has been substituted for "the effective date of this section" on authority of sec. 771(d) of Act Dec. 24, 1973, as amended, set out as a note under § 1-121.

In subsec. (f) (2) and (3) (B), "December 24, 1973" has been substituted for "the date of the enactment of this Act".

In subsec. (h) (1) and (2), "January 2, 1975" has been substituted for references to "the effective date of title IV of this Act" and "such effective date" on authority of section 771(c) of Act Dec. 24, 1973, as amended, set out as a note under § 1-121.

In subsec. (i), "January 2, 1975" has been substituted for references to "the effective date of title IV of this Act", "the effective date of such title", and "such effective date" on the authority cited in the preceding paragraph.

Section is also classified to 40 U.S.C. § 136.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

PRESIDENTIAL EXECUTIVE ORDER 11815

DELEGATING TO THE NATIONAL CAPITAL PLANNING COMMISSION THE FUNCTION OF ESTABLISHING THE METES AND BOUNDS OF THE NATIONAL CAPITAL SERVICE AREA

Ex. Ord. No. 11815, Oct. 23, 1974, 39 F.R. 37963, provided:

By virtue of the authority vested in me by section 739 (g) of the District of Columbia Self-Government and Governmental Reorganization Act (87 Stat. 828; Public Law 93-198), and as President of the United States, the Chairman of the National Capital Planning Commission is authorized and directed to exercise all authority and to carry out all duties vested in the President by section 739 (g) of the above cited law with respect to establishing the metes and bounds of the National Capital Service Area. Prior to establishing said metes and bounds, the Chairman shall consult with the appropriate representative of the District of Columbia Government.

Chapter 2.—CONSTRUCTION OF PUBLIC BUILDINGS

Sec.

9-220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized.

9-221. Construction services working fund.

§ 9-201. Municipal center—Establishment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-202. Municipal center—Rental.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-204. Public buildings—Loans for construction authorized—Projects enumerated—Location determined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-205. Public buildings—Funds available for acquiring lands for public use—Condemnation proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-206. Public buildings—Reimbursement, proportion of tax receipts to be credited to reimbursement fund—Anticipating payments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-207. Public buildings—Reports to be submitted to Congress.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-208. May borrow money from United States for public works—Approval of President—Certain projects authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-209. Purposes for which funds may be used.

The sum authorized by section 9-208, or any part thereof shall, when advanced, be available to the Mayor of the District of Columbia for the acquisition by dedication, purchase, or condemnation of the fee-simple title to land, or rights or easements in land, for the public uses authorized by sections 9-208 to 9-212, and for the preparation of plans, designs, estimates, models, and specifications; and for architectural and other necessary professional services without reference to section 1-808, for the construction of buildings, including materials and labor, heating, lighting, elevators, plumbing, landscaping, and all other appurtenances, and the purchase and installation of machinery, furniture, equipment, apparatus, and any and all other expenditures necessary for or incident to the complete construction and equipment for use of the aforesaid buildings and plants. All contracts, agreements, and proceedings in court for condemnation or otherwise, pursuant to sections 9-208 to 9-212 shall be had and made in accordance with existing provisions of law except as otherwise herein provided. (June 25, 1938, 52 Stat. 1204, ch. 704, § 2.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

The exception from "the Classification Act of 1923, as amended" has been omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949 (63 Stat. 972, 973) repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While § 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exception contained in this section because of § 1106(b) that provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by § 1106(a). The Classification Act of 1949 was repealed by Act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632 (of which § 1 revised and enacted title 5, U.S.C., into law). Section 5102 of title 5, U.S.C., now contains the applicability provisions of the 1949 Act.

§ 9-210. Repayment of funds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-211. Estimates and report to Congress.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-212. Limitations on borrowing power.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-213. Interest on funds borrowed from Public Works Administration.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-214. Interest to be determined by Secretary of Treasury.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-215. Authorized to borrow additional funds for public works—Approval of President—Certain project specified.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-216. Purposes for which funds may be used.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-217. Repayment — Interest — Included in annual budget.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-218. Estimates and report to Congress.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-219. Supervision and approval of plans and specifications.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized.

* * * * *

(b)–(e). Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(a), 87 Stat. 832.

* * * * *

(As amended Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(a), 87 Stat. 832.)

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section by striking out subssecs. (b), (c), (d), and (e). For provisions prior to amendment, see the 1973 edition of the Code. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the amendment repealing subssecs. (b)–(e) of this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the character set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

LOAN PAYMENT OBLIGATION

Section 743(e) of Act Dec. 24, 1973, Pub. L. 93-198, provided: "Nothing contained in this section [repealing sections 7-133, 9-220(b)–(e), 43-1540, 43-1612, 43-1613, 43-1615 to 43-1617] shall be deemed to relieve the District of its obligation to repay any loan made to it under the authority of the Acts specified in the preceding subsections, nor to preclude the District from using the unexpended balance of any such loan appropriated to the District prior to the effective date of this provision, nor to prevent the District from fulfilling the provisions of section 722 [§ 47-2501 note]."

INTERIM LOAN AUTHORITY

Section 723 of title VII of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 821, provided:

"(a) The Mayor is authorized to accept loans for the District from the Treasury of the United States, and the Secretary is authorized to lend to the Mayor, such sums as the Mayor may determine are required to complete capital projects for which construction and construction services funds have been authorized or appropriated, as the case may be, by Congress prior to the effective date of title IV [Jan. 2, 1975]. In addition, such loans may include funds to pay the District's share of the cost of the adopted regional system specified in the National Capital Transportation Act of 1969 [§ 1-1441 et seq.].

"(b) Loans advanced pursuant to this section during any six-month period shall be at a rate of interest determined by the Secretary as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowing at a maturity approximately equal to the period of time the loan is outstanding.

"(c) Subject to the limitations contained in section 603(b) [§ 47-228(b)], there are authorized to be appropriated such sums as may be necessary to make loans under this section."

CROSS REFERENCE

Multiyear capital improvements plan, see § 47-223.

§ 9-221. Construction services working fund.

(a) There is established in the Treasury of the United States a permanent working fund, without fiscal year limitation, to be known as the Construction Services Fund, Department of General Services, District of Columbia. The Mayor is authorized to transfer to such fund from capital outlay appropriations for public building construction

such amounts as he may deem necessary to carry out the purposes of this section, and, subject to subsequent adjustment, advances and reimbursements may be made to such fund from appropriations for services to other departments and agencies of the District government, without reference to fiscal year limitations on such appropriations. The fund shall be available for expenses incurred in the initial planning for construction projects, for work performed under contract or otherwise, including, but not limited to, preliminary planning and related expenses, surveys, preparation of plans and specifications, soil investigation, administration, overhead, planning design, engineering, inspection, and contract management.

(b) The Council of the District of Columbia shall annually review the budget of the Construction Services Fund within ninety days after the annual District of Columbia Appropriations Act is enacted into law.

(c) The Council of the District of Columbia, the Board of Higher Education, the Board of Vocational Education, the Board of Education, the Public Library Board, and the Executive Director of the District of Columbia Court System shall be kept fully advised, at least semiannually, of the status of projects and activities within their respective areas of concern which are financed from the Construction Services Fund. (Oct. 26, 1973, Pub. L. 93-140, § 13, 87 Stat. 506.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

Chapter 3.—SALE OF PUBLIC LANDS

§ 9-301. Commissioners authorized to sell real estate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-302. Expenses of sales of real estate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-303. Commissioner to execute deeds to sell real estate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 4.—EXCHANGE OF DISTRICT-OWNED LAND

§ 9-401. Council empowered to effect exchange.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-402. Publication of intended exchange.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-403. Authorization for execution or acceptance of proper deed of conveyance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 9-404. Authority to pay or receive amounts as part of consideration for exchange.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—REPAIRS AND IMPROVEMENTS

§ 9-501. Repairs and improvements—Working fund.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 10.—WEIGHTS, MEASURES, AND MARKETS

Chapter 1.—WEIGHTS, MEASURES, AND MARKETS

§ 10-101. Department of Weights, Measures, and Markets created—Director—Assistants and employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-102. Director to give bond and take oath.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-103. Director to have exclusive powers—Weighing and measuring devices to be examined—Condemnation of devices not conforming to standards—Unapproved weighing and measuring devices not to be possessed or used—Director not required to approve devices belonging to United States.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-117. Packages of food to be marked with weight, measure, or count—Council may authorize variation, tolerances, and exemptions as to small packages.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-118. Cord of wood—Standard—Council to fix standard load of certain split wood.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-127. Council may establish tolerances and specifications.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-128. Weighmasters—Public scales—Fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-130. Enactment and enforcement of rules and regulations—Supervision of produce and other markets—Investigations and reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-131. "Commissioner" to mean Commissioner of the District of Columbia—"Director" to mean Director of Weights, Measures, and Markets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-135. Jurisdiction over fish wharf and market—Leases, rentals, fees—Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 10-136. Markets—Disposition of receipts—Charges.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

PART II

JUDICIARY AND JUDICIAL PROCEDURE

Part II, consisting of Titles 11 to 17 inclusive, was enacted by Pub. L. 88-241, § 1, Dec. 23, 1963, 77 Stat. 478, effective Jan. 1, 1964. The Act of July 29, 1970, Pub. L. 91-358, 84 Stat. 473, known as the "District of Columbia Court Reform and Criminal Procedure Act of 1970", completely revised Title 11 and made other revisions and amendments to the Code which are set out in the main edition.

TITLE 11. ORGANIZATION AND JURISDICTION OF THE COURTS.	TITLE 15. JUDGMENTS AND EXECUTIONS—FEES AND COSTS.
TITLE 12. RIGHT TO REMEDY.	TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.
TITLE 13. PROCEDURE GENERALLY.	TITLE 17. REVIEW.
TITLE 14. PROOF.	

TITLE 11.—ORGANIZATION AND JURISDICTION OF THE COURTS

Chap.	Sec.
26. ¹ Representation of Indigents in Criminal Cases	11-2601

Chapter 1.—GENERAL PROVISIONS

§ 11-101. Judicial power

CROSS REFERENCES

District Charter provisions relating to judicial power of the District of Columbia, see § 431 of title 11 Appendix. Limitation on Council to enact any act, resolution, or rule with respect to any provision of title 11, see § 1-147.

NOTES TO DECISIONS

Constitutionality

Congress did not violate article of Constitution pertaining to the judicial power of the United States by vesting jurisdiction over local felonies in the District of Columbia Superior Court, *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; aff'd 93 S. Ct. 1670, 411 U.S. 389).

Under its constitutional power to legislate for the District of Columbia, Congress may provide for trying local criminal cases before judges who, in accordance with District of Columbia Code, are not accorded life tenure and protection against reduction in salary. *Id.*

§ 11-102. Status of District of Columbia Court of Appeals

NOTES TO DECISIONS

D.C. Court of Appeals decisions

Policy underlying District of Columbia Court Reorganization Act of 1970 requires greatest deference to decisions of the District of Columbia Court of Appeals. *M.A.S., Inc. v. Van Curler Broadcasting Corp. et al.* (1973, 357 F. Supp. 686).

A federal district court sitting as a local court in the District of Columbia should defer to the District of Columbia Court of Appeals' interpretation of local statutes, at least where federal statutory or constitutional issues are not involved. *Id.*

United States District Court for District of Columbia would not follow decision of the District of Columbia Court of Appeals where, in view of factors not considered in opinion of District of Columbia Court of Appeals, it appeared that the District of Columbia Court of Appeals itself would not follow that decision. *Id.*

U.S. Court of Appeals decisions

Opinion which interpreted D.C. Minimum Wage Act and which was published by United States Court of Appeals for the District of Columbia after effective date of Judicial Reorganization Act and at time when District of Columbia Court of Appeals had final authority to interpret a District of Columbia enactment did not constitute controlling precedent for the District of Columbia Court of Appeals, even though leave to appeal in the case had been granted prior to effective date of the Judicial Reorganization Act. *District of Columbia et al. v. Schwerman Trucking Company* (D.C. App. 1974, 327 A. 2d 818).

District of Columbia Court of Appeals is generally not bound by decisions of the United States Court of Appeals for the circuit rendered subsequent to the District of Columbia Court Reorganization Act of 1970; however, deference will be had to federal decision constituting a reasonable interpretation of federal legislation of nationwide applicability, such as the Federal Youth Corrections Act. *C. D. Small v. United States* (D.C. App. 1973, 304 A. 2d 641).

Decision of United States Court of Appeals for the District of Columbia Circuit subsequent to 1971 court reorganization was not binding on District of Columbia Court of Appeals, even where constitutional issue was presented; however, previously decided decisions of former court continued to be binding on latter. *United States v. K. C. Simmons* (D.C. App. 1973, 302 A. 2d 728).

Court of Appeals for the District of Columbia Circuit would not defer to decisions of the District of Columbia Court of Appeals upholding criminal statute, where Court of Appeals for District of Columbia Circuit had jurisdiction to resolve appeals involving statute on their merits, position of the lower court on the constitutional question was clear, two appellants had been convicted under the statute and a third faced trial under it, and Court of Appeals of District of Columbia Circuit had previously made known its view that the constitutional claim had merit. *J. Holly v. United States* (1972, 464 F. 2d 796, 150 U.S. App. D.C. 287).

Law established by United States Court of Appeals for District of Columbia, when it was functioning as highest court for District of Columbia, in comparable state status, is controlling and conflicting decision by United States Court of Appeals for District of Columbia, coming after 1970 Reorganization Act establishing the District of Columbia Court of Appeals as the highest District of Columbia court, is not controlling. *A. L. Luck v. Baltimore and Ohio Railroad Company* (1972, 352 F. Supp. 331).

¹ Chapter added without adding item 26 to analysis.

Decision of United States Court of Appeals with respect to statute pertaining to notice of a claim against District of Columbia, constituted law of the case since it had jurisdiction to review decision of District of Columbia Court of Appeals when decision of District of Columbia Court of Appeals was rendered and when petition for allowance of appeal was filed, but where decision was rendered after effective date of statute providing that decisions of District of Columbia Court of Appeals would not longer be subject to review by United States Court of Appeals, decision would constitute no binding precedent on future cases in District of Columbia Court of Appeals. *District of Columbia v. R. Smith* (D.C. App. 1972, 297 A. 2d 787).

Local law

Following adoption of District of Columbia Court Reform and Criminal Procedure Act of 1970, the United States Court of Appeals for the District of Columbia is no longer the final expositor of the local law of the District. *United States v. B. L. Peterson* (1973, 483 F. 2d 1222, 157 U.S. App. D.C. 219; cert. denied 94 S.Ct. 367, 414 U.S. 1007).

Chapter 3.—UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

§ 11-301. Jurisdiction of appeals from the District of Columbia Court of Appeals

SALE OF REPORTS OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Section 402 of the Judiciary Appropriation Act, 1976, approved Oct. 21, 1975, Pub. L. 94-121, 89 Stat. 633, provided: "The reports of the United States Court of Appeals for the District of Columbia shall not be sold for a price exceeding that approved by the court and for not more than \$9.00 per volume."

SIMILAR PROVISIONS

1975—Oct. 5, 1974, Pub. L. 93-433, § 402, 88 Stat. 1203.

1974—Nov. 27, 1973, Pub. L. 93-162, § 402, 87 Stat. 653.

1973—Oct. 25, 1972, Pub. L. 92-544, § 402, 86 Stat. 1127.

NOTES TO DECISIONS

Maryland court decisions

The United States Court of Appeals for the District of Columbia is not bound to follow decisions of courts of Maryland, particularly if they were handed down subsequent to the organization of the District of Columbia. *L. Blair v. The Prudential Insurance Co. of America* (1972, 472 F. 2d 1356, 153 U.S. App. D.C. 281).

Status of decisions

Law established by United States Court of Appeals for District of Columbia, when it was functioning as highest court for District of Columbia, in comparable state status, is controlling and conflicting decision by United States Court of Appeals for District of Columbia, coming after 1970 Reorganization Act establishing the District of Columbia Court of Appeals as the highest District of Columbia court, is not controlling. *A. L. Luck v. Baltimore and Ohio Railroad Company* (1972, 352 F. Supp. 331).

Chapter 5.—UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUBCHAPTER I.—JURISDICTION

§ 11-501. Civil jurisdiction

NOTES TO DECISIONS UNDER PRESENT LAW

Amount in controversy

In action in United States District Court for District of Columbia as superior local court, where one plaintiff's claim was in excess of \$10,000 jurisdictional minimum, requirements of court's local jurisdiction were satisfied even if claim of other plaintiff, which arose out of same operative facts, was well below court's jurisdictional minimum. *J. Honey et al. v. George Hyman Construction Co. et al.* (1974, 63 F.R.D. 443).

Insurer which claimed as subrogee and insured which claimed loss uncompensated by insurance possessed single title or right in which they had common and undivided

interest, and claims could be aggregated to determine amount in controversy. *Id.*

Even in absence of federal question, allegation by arrestees of \$50,000 in controversy would have given District of Columbia federal courts "local" equity jurisdiction of arrestees' action against District of Columbia official for injunctive relief with respect to prosecution of charges, bond collateral forfeitures and expungement of arrest records. *N. Sullivan et al. v. C. F. Murphy, Corporation Counsel, et al.* (1973, 478 F. 2d 938, 156 U.S. App. D.C. 28; cert. denied 94 S.Ct. 162, 414 U.S. 880).

Counterclaims

Counterclaim of defendant, in civil action for review of adjudication of priority of invention in interference proceeding, asserting that plaintiffs misappropriated certain inventions of defendant and asking court to impress a trust in favor of defendant and appoint receiver pendente lite was within the subject matter jurisdiction of court since it fell within the general jurisdiction of the district court in its capacity as a local court for the District of Columbia. *Montecatini Edison, S.P.A. v. K. Ziegler et ano.* (1973, 486 F. 2d 1279, 159 U.S. App. D.C. 19).

Ejectment proceedings

Under District of Columbia ejectment statute (§ 45-910) as amended by 1970 Court Reform Act, District Court does not have original jurisdiction over ejectment proceedings brought by the United States; intent of Court Reform Act was to vest exclusive jurisdiction of all ejectment proceedings in Superior Court, even those brought by the United States. *H. and J. Herian et al. v. United States* (1973, 363 F. Supp. 287).

Federal jurisdiction

Where actions against District of Columbia police officers and chief of police for redress of deprivation of constitutional rights arose directly under the Fourth and Fifth Amendments and were within the "federal question" jurisdiction of the United States District Court, the court also had pendent jurisdiction over common-law claims stated against the District of Columbia defendants. *W. H. Apton et al. v. J. V. Wilson (Chief of Police) et al.* (1974, 506 F. 2d 83, 165 U.S. App. D.C. 22).

Where arrestees' claim of violation of federal constitutional rights by arrest procedures utilized during civil disorders were neither insubstantial nor frivolous and more than ten thousand dollars was in controversy, there was federal jurisdiction to decide the claim. *N. Sullivan et al. v. C. F. Murphy, Corporation Counsel, et al.* (1973, 478 F.2d 938, 156 U.S. App. D.C. 28; cert. denied 94 S.Ct. 162, 414 U.S. 880).

The federal courts have jurisdiction to entertain actions to enforce federal constitutional rights and fact that such actions are also maintainable in state courts, or in the local courts of the District of Columbia, does not foreclose access to the federal courts, or require prior exhaustion of such state or local remedies. *Id.*

Arrestees were entitled to maintain in federal court their action against District of Columbia officials to set aside forfeiture of bail collateral security where there was serious doubt of the availability of relief in the District of Columbia courts and there was assertion that, because of misinformation circulated to the arrestees at the time they posted bond, large numbers of them were frustrated in their efforts to secure procedural due process with respect to the forfeitures of collateral. *Id.*

Where large numbers of persons were arrested during May, 1971, civil disorders, many of arrests were made without probable cause, arrestees were not given judicial hearing on probable cause, and possibility existed that many of the persons who obtained their release by posting bond were misled by erroneous information as to nature and consequences of posting bail and circumstances under which the bond could be recovered, federal court had jurisdiction to invalidate the forfeitures of the bonds. *Id.*

Jurisdiction under prior law

Where proceeding by person previously committed to mental hospital is part of two commitment proceedings begun in District Court sometime previously, Court has jurisdiction over later petition to have commitments declared illegal and vacated despite fact that District of Columbia Court Reorganization Act of 1970 vested exclusive jurisdiction over mental health matters in Superior

Court. *In the Matter of R. A. Brown* (1975, 68 F.R.D. 172).

Pendent jurisdiction

Where federal claims are disposed of on a motion for summary judgment, comity and justice require that the district court decline to exercise pendent jurisdiction and dismiss any local law claims. *M. A. Marshall v. District of Columbia et al.* (1975, 392 F. Supp. 1012).

NOTES TO DECISIONS UNDER PRIOR LAW

Equitable actions

District Court for District of Columbia had jurisdiction to entertain federal prisoners' complaint for declaratory and injunctive relief in the nature of mandamus with respect to federal prisoners' rights to due process in denials of applications for parole since such court has general equity jurisdiction, and venue where either party is resident or found within the District of Columbia which permits actions for declaratory judgment as well as injunction to be maintained against those whose office in the federal government establishes their official residence in the District. *W. R. Childs, Jr., et al. v. United States Board of Parole* (1974, 511 F. 2d 1270, 167 U.S. App. D.C. 268).

Where goal of plaintiff's suit for relief from action of District of Columbia police in enforcing vagrancy laws was equitable and of a type which could not be granted by Court of General Sessions which possessed exclusive jurisdiction of civil actions in which the claimed value did not exceed \$10,000, Court of General Sessions lacked authority to entertain suit and United States District Court for the District of Columbia had jurisdiction. *M. J. Gomez v. J. V. Wilson, Chief of Police, et al.* (1973, 477 F. 2d 411, 155 U.S. App. D.C. 243; remanding 323 F. Supp. 87).

Found Within the District

Under statute relating to the local jurisdiction of the United States District for the District of Columbia as including civil actions between parties where either or both are residents or found within the District, plaintiff by having brought suit under statute to review adjudication of priority of invention and interference proceeding was "found" within the District. *Montecatini Edison, S.P.A. v. K. Ziegler et ano.* (1973, 486 F. 2d 1279, 159 U.S. App. D.C. 19).

One invoking the jurisdiction of the United States Court for the District of Columbia against an adversary cannot expect at the same time to be shielded from the claims of his opponents, and hence one commencing and prosecuting civil action in the district court is found within the District for purposes of any counterclaim by adversary whether or not it involves the same subject matter as the main claim. *Id.*

Jurisdiction—Withholding of

District Court for the District of Columbia was not required, under doctrine of *Younger v. Harris*, to abstain from exercising its jurisdiction over class action brought by persons arrested for local criminal offenses for injunctive and declaratory relief to enjoin police officials from transmitting arrest records to Federal Bureau of Investigation and to request return of those records already transmitted. *J. E. Utz et al. v. M. Cullinane* (1975, 520 F. 2d 467, 172 U.S. App. D.C. 67).

Residents

Record in action for individual and class relief with respect to actions of District of Columbia police in enforcing vagrancy laws amply showed the required residency of plaintiff within the District so that federal district court had jurisdiction under statute giving district court original jurisdiction of civil action between parties who are residents of District. *M. J. Gomez v. J. V. Wilson, Chief of Police, et al.* (1973, 477 F. 2d 411, 155 U.S. App. D.C. 243; remanding 323 F. Supp. 87).

§ 11-502. Criminal jurisdiction

NOTES TO DECISIONS UNDER PRESENT LAW

Construction

District of Columbia Court Reform Act's requirement that evidence of certain types of prior crimes be admitted for impeachment purposes applies to trials of Code offenses conducted in United States district court dur-

ing transition period established by Code. *United States v. R. E. Yates* (1975, 524 F.2d 1282, 173 U.S. App. D.C. 308).

Dismissal of Federal offense

Where federal and local offenses have been properly joined in one indictment and jeopardy has attached, the district court may proceed to a determination of the local offenses regardless of any intervening disposition of the federal counts. *United States v. R. Shepard* (1975, 515 F.2d 1324, 169 U.S. App. D.C. 353).

Federal jurisdiction

Armed kidnapping charges brought against prisoner in District of Columbia jail as result of riot and attempted escape were properly tried by federal court in the District of Columbia, as were charges of conspiracy and attempted escape from federal custody arising out of the same incident, so that § 22-3202 providing minimum sentence for certain second offenders was properly applied. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, — U.S. —).

Joinder

In absence of specific federal statute superseding prosecution in District of Columbia on local offenses, defendant whose acts constitute violations of both federal and District of Columbia law can properly be subject of single trial in federal district court under joint indictment; only constraint on such prosecution is that where federal and local offenses are identical or where one would be lesser included offense of other, defendant may ultimately be sentenced under only one statutory scheme. *United States v. G. E. Jones* (1975, 527 F.2d 817, —U.S. App. D.C.—).

Defendants were not deprived of due process or equal protection of law when they were subjected, in single proceeding in federal district court, to simultaneous prosecution for possession of heroin with intent to distribute in violation of Comprehensive Drug Abuse Prevention and Control Act of 1970 and for simple possession of heroin in violation of § 33-402. *Id.*

NOTES TO DECISIONS UNDER PRIOR LAW

Jurisdiction—Withholding of

District Court for the District of Columbia was not required, under doctrine of *Younger v. Harris*, to abstain from exercising its jurisdiction over class action brought by persons arrested for local criminal offenses for injunctive and declaratory relief to enjoin police officials from transmitting arrest records to Federal Bureau of Investigation and to request return of those records already transmitted. *J. E. Utz et al. v. M. Cullinane* (1975, 520 F.2d 467, 172 U.S. App. D.C. 67).

§ 11-503. Removal of cases from the Superior Court of the District of Columbia

NOTES TO DECISIONS

Construction

In view of express terms of 1970 Court Reform Act, District of Columbia ejectment statute (§ 45-910) as amended by 1970 Court Reform Act was not "Act of Congress" within statute (28 U.S.C. 1345, 1363) giving original jurisdiction in district court of suits brought by the United States except as otherwise provided by Act of Congress. *H. and J. Herian et al. v. United States* (1973, 363 F. Supp. 287).

Ejectment proceedings

Under District of Columbia ejectment statute (§ 45-910) as amended by 1970 Court Reform Act, District Court does not have original jurisdiction over ejectment proceedings brought by the United States; intent of Court Reform Act was to vest exclusive jurisdiction of all ejectment proceedings in Superior Court, even those brought by the United States. *H. and J. Herian et al. v. United States* (1973, 363 F. Supp. 287).

Any claims which defendants sought to make concerning federal housing policy could be raised in District of Columbia Superior Court as defenses to ejectment proceeding brought by United States. *Id.*

Rights of defendant

Defendants in District of Columbia have right to removal concomitant with defendants sued in state courts.

District of Columbia v. Ranger Construction Company et ano. (1974, 394 F.Supp. 801).

Chapter 7.—DISTRICT OF COLUMBIA COURT OF APPEALS

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

Sec.

11-744. Judicial conference.

AMENDMENT

1975—Item 11-744 added by Act Dec. 31, 1975, Pub. L. 94-193, § 1(b).

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11-701. Continuation of court; court of record; seal

CROSS REFERENCE

Continuation of court, see § 718 of title 11 Appendix.

§ 11-703. Judges; service; compensation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 718 of title 11 Appendix.

§ 11-708. Clerks and secretaries for judges

Each judge may appoint and remove a personal secretary. The chief judge may appoint and remove three personal law clerks, and each associate judge may appoint and remove two personal law clerks. In addition, the chief judge may appoint and remove not more than three law clerks for the court. The law clerks appointed for the court shall serve as directed by the chief judge. (As amended Dec. 31, 1975, Pub. L. 94-191, § 1, 89 Stat. 1098.)

AMENDMENT

1975—Act Dec. 31, 1975, Pub. L. 94-191, increased from two to three the number of personal law clerks for the chief judge, and increased from one to two the number of personal law clerks for each associate judge.

SUBCHAPTER II.—JURISDICTION

§ 11-721. Orders and judgments of the Superior Court

CROSS REFERENCE

District Charter provisions relating to jurisdiction of Court of Appeals, see § 431 of title 11 Appendix.

NOTES TO DECISIONS

Appealable orders

Order disqualifying counsel is appealable. *American Archives' Counsel v. V. L. Bittenbender, Administratrix, etc.* (D.C. App. 1975, 345 A.2d 487).

Whether trial court had jurisdiction over defendant after releasing him from its jurisdiction does not determine jurisdiction of Court of Appeals on appeal, and government can appeal the trial court's order where it was entered without authority. *United States v. M. K. Shorter* (D.C. App. 1975, 343 A.2d 569).

Denial of leave to intervene as of right under Superior Court rule is final order appealable immediately to Court of Appeals. *Calvin-Humphrey et al. v. District of Columbia et al.* (D.C. App. 1975, 340 A.2d 795).

Order authorizing negotiations for private sale of property under conservatorship was not final, and thus not appealable. *In re E. A. Parsons* (D.C. App. 1974, 328 A. 2d 383; cert. denied 96 S. Ct. 11, 423 U.S. 803).

A denial of a motion to dismiss based upon a claim of forum non conveniens is a final and an appealable order. *District-Realty Title Insurance Corporation v. D. M. Goodrich et al.* (D.C. App. 1974, 328 A. 2d 92).

An order of dismissal on grounds of forum non conveniens is clearly a final order and is properly appealable. *D. D. Frost et al. v. Peoples Drug Store, Incorporated, et al.* (D.C. App. 1974, 327 A. 2d 810).

Trial court's denial of pretrial motion for dismissal on grounds of forum non conveniens is a final order and appealable. *Id.*

Even though juvenile did not file notice of appeal from order denying application to reconsider order detaining him pending trial within two-day period provided for interlocutory appeals, appellate court had jurisdiction to review order by viewing it as final order, as to which such two-day limitation did not apply. *In the Matter of M. L. DeJ.* (D.C. App. 1973, 310 A.2d 834).

Dismissal of an information without prejudice is an appealable order. *United States v. T. L. Cummings* (D.C. App. 1973, 301 A. 2d 229).

That dismissal of indictment without prejudice created no bar to seeking a new indictment did not render dismissal order nonreviewable. *United States v. M. M. Hector* (D.C. App. 1972, 298 A. 2d 504).

Error affecting substantial rights

Allowing officer to testify about events occurring after alleged assault on him, while preventing defendant from testifying about a beating he assertedly received from other guards in officer's presence immediately thereafter, if error, did not constitute an error affecting substantial rights of parties, for purposes of this section directing the Court of Appeals to render judgment on appeal without regard to errors not affecting the substantial rights of parties. *H. B. Johnson v. United States* (D.C. App. 1972, 298 A. 2d 516).

Final orders

Appeal from an adjudication of contempt but before announcement of sentence is premature. Decision in criminal case is final for appellate purposes only when litigation between parties is terminated and nothing remains but enforcement by execution of what has been determined; to create finality in criminal case it is necessary that there be a judgment of conviction followed by a sentence. *J. N. West v. United States* (D.C. App. 1975, 346 A.2d 504).

The term "final orders" for purposes of statute governing appellate jurisdiction is not limited to final judgments which terminate an action. *D. D. Frost et al. v. Peoples Drug Store, Incorporated, et al.* (D.C. App. 1974, 327 A. 2d 810).

Harmless error

In light of adoption of preponderance standard for determining voluntariness of a confession, any error in admitting defendant's statement while entertaining a reasonable doubt about voluntariness was at best harmless error which the Court of Appeals was required to ignore. *N. Hawkins v. United States* (D.C. App. 1973, 304 A. 2d 279).

Interlocutory appeals

Where, by terms of stipulation, retrial of original claim would be waived and case would be dismissed with prejudice if, after granting application for interlocutory appeal, Court of Appeals ruled in favor of respondent, but if the court were to rule for applicants, the litigation would be protracted by necessity of trial on counterclaim and possibly a retrial of original claim as well, the stipulation does not meet requirement for interlocutory appeal that alternative to it would mean greater delay and expense than interlocutory review itself and application for permission to appeal must be denied. *M. E. Heusen et al. v. J. R. Lynch et ano.* (D.C. App. 1975, 343 A.2d 45).

Record

Where record on appeal from order detaining juvenile pending trial on charges of carnal knowledge and assault was insufficient to indicate factors relied upon by the court in answering order, case would be remanded to Superior Court with directions that judge file statements of reasons for order or reconsider same. *In the Matter of M. L. DeJ.* (D.C. App. 1973, 310 A.2d 834).

Standing

Where order of probate division determining that heir finder which had taken assignments of one-third of whatever interest each individual plaintiff had in estate was not a proper party was not appealed from, and primary objective of counsel for heir finder in appealing from order striking their appearances as counsel for in-

dividual plaintiffs was to represent heir finder, counsel does not have standing to appeal. *American Archives' Counsel v. V. L. Bittenbender, Administratrix, etc.* (D.C. App. 1975, 345 A.2d 487).

Time for appeal

Where trial court orally granted motion to dismiss information on August 16, 1974, and on August 26, 1974, order was entered on the criminal docket so as to have of record an appealable order, notice of appeal filed on September 5, 1974, is timely within rule prescribing a ten-day period for filing notice of appeal. *United States v. F. H. Miqueli* (D.C. App. 1975, 349 A.2d 472).

Even if Court were to consider appeal taken from adjudication of contempt but before announcement of sentence to be an appeal from a final judgment, Court of Appeals would still be compelled to dismiss since the notice of appeal was prematurely filed more than a month before sentencing. *J. N. West v. United States* (D.C. App. 1975, 346 A.2d 504).

— Extension

Where divorce decree was signed out of presence of parties and counsel, and where death in judge's family had caused counsel for wife not to press for conference on her motion for counsel fees and for personal property, counsel could have kept abreast of the case through contact with law clerk or with clerk's office, and fact that counsel expected hearing to be held before judgment is not "excusable neglect" within meaning of rule providing that upon a showing of "excusable neglect" Superior Court may extend time for filing notice of appeal by any party for period not to exceed 30 days from expiration of time otherwise provided, so that denial of motion for extension of time to note appeal did not constitute an abuse of discretion. *E. E. Pryor v. A. J. Pryor* (D.C. App. 1975, 343 A.2d 321).

§ 11-722. Administrative orders and decisions

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

District Charter provisions relating to jurisdiction of Court of Appeals, see § 431 of title 11 Appendix.

NOTES TO DECISIONS

Construction

Provisions of this section that Court of Appeals has jurisdiction to review orders and decisions of any agency of the District in accordance with Administrative Procedure Act (§§ 1-1501 et seq.), and may review orders or decision of the Public Service Commission in accordance with Commission's organic act (chapters 1-10 of title 43), carves out only a limited area in which Administrative Procedure Act is inapplicable to the Commission, that being in the area of standard and scope of review, rather than a wholesale exemption from Administrative Procedure Act coverage. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 339 A.2d 710).

Housing Rent Commission orders

District of Columbia Court of Appeals is without jurisdiction to review Housing Rent Commission's voiding of hearing examiner's order allowing increased cost of operating property to be passed through to tenants due to landlord's failure to serve order on parties and Commission within 45 days after decision; review thereof would be in the Superior Court. *Columbia Realty Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1975, 350 A.2d 120).

Joint Committee on Landmarks

Joint Committee on Landmarks of the National Capital as an intergovernmental agency is not an agency of the District of Columbia, and the Court of Appeals lacks jurisdiction to entertain petition for review of its action under the Administrative Procedure Act. *J. W. Latimer,*

Jr., et al. v. The Joint Committee on Landmarks of the National Capital (D.C. App. 1975, 345 A.2d 484).

Zoning Commission orders

Absent "contested case" status under Administrative Procedure Act (§§ 1-1501 et seq.), Court of Appeals does not have jurisdiction to directly review Zoning Commission's order amending zoning regulations under section 1-1510 relating to review by Court of administrative orders including power to hold unlawful and set aside findings and conclusions in enumerated instances, as that section does not denote a grant of jurisdiction but is a plain statement of scope of judicial review applicable only to contested cases. *Dupont Circle Citizen's Association et al. v. District of Columbia Zoning Commission* (D.C. App. 1975, 343 A.2d 296).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property, the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act (§§ 1-1501 et seq.), with the result that such decision is not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus is subject to review. *W. C. & A. N. Miller Development Company v. District of Columbia Zoning Commission* (D.C. App. 1975, 340 A.2d 420).

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 11-743. Rules of Court

CROSS REFERENCES

Attorneys, rules respecting, see § 11-2501.
Superior Court rules, see § 11-946.

NOTES TO DECISIONS

Court costs

Length of delay in implementing retroactive payment order of Commissioner of Department of Human Resources justifies an assessment of costs in form of a \$25 filing fee against administrative officers in their official capacity once petition in nature of mandamus to compel agency action was dismissed as moot after officers tardily performed requested action. *B. Dillard et ano. v. J. P. Yeldell et al.* (D.C. App. 1975, 334 A.2d 578).

Interpretation of rules

Court of Appeals in interpreting its own procedural rules is not bound by an interpretation given to similar federal procedural rules by the District of Columbia Circuit Court. *J. N. West v. United States* (D.C. App. 1975, 346 A.2d 504).

§ 11-744. Judicial conference

The chief judge of the District of Columbia Court of Appeals shall summon annually the active associate judges of the District of Columbia Court of Appeals and the active judges of the Superior Court of the District of Columbia to a conference at a time and place that he designates, for the purpose of advising as to means of improving the administration of justice within the District of Columbia. He shall preside at such conference which shall be known as the Judicial Conference of the District of Columbia. Every judge summoned shall attend, and, unless excused by the chief judge of the District of Columbia Courts of Appeals, shall remain throughout the conference. The District of Columbia Court of Appeals shall provide by its rules for representation of and active participation by members of the District of Columbia Bar and other persons active in the legal profession at such conference. (Dec. 31, 1975, Pub. L. 94-193, § 1(a), 89 Stat. 1102.)

Chapter 9.—SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11-901. Continuation of courts; court of record; seal

CROSS REFERENCE

Continuation of court, see § 718 of title 11 Appendix

§ 11-904. Judges; service; compensation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 718 of title 11 Appendix.

SUBCHAPTER II.—JURISDICTION

§ 11-921. Civil Jurisdiction

CROSS REFERENCE

District Charter provisions relating to jurisdiction of Superior Court, see § 431 of title 11 Appendix.

NOTES TO DECISIONS UNDER PRESENT LAW

Amount claimed

Where complaint for personal injuries in amount of \$10,000 was filed by plaintiff and jurisdictional limit in civil actions was thereafter raised in the District of Columbia Court of General Sessions, granting of motion to amend the ad damnum of the complaint from \$10,000 to \$50,000 was error since Congress deliberately intended to limit recovery in cases originally docketed to the maximum amount then in effect. *D.C. Transit System, Inc. v. V. McLeod* (D.C. App. 1973, 300 A.2d 440).

Equitable powers

By specifically vesting the Superior Court with jurisdiction to review Rent Commission's decisions, Congress gave statutory recognition to authority of trial court to use its equity power in rent control field. *Columbia Realty Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1975, 350 A.2d 120).

Superior Court rather than District of Columbia Court of Appeals had jurisdiction to review Housing Rent Commission's decision affirming order allowing landlord to increase rents charged at apartment building so as to insure return on investment. *Id.*

Superior Court did not abuse its discretion in taking equitable jurisdiction in case, in which landlords sought to have rent control regulation declared invalid and in which Housing Rent Commission was shown to have had an administrative inability to decide landlords' petitions for hardship adjustments, notwithstanding contention that landlords' proper remedy would have been to wait 60 days and then commence an action in superior court pursuant to provision of District of Columbia Rent Control Act. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Commissioner, et al.* (D.C. App. 1975, 343 A.2d 323).

Excessive verdict—Reduction

Trial court did not abuse discretion in curing excessiveness of verdict by reducing amount recovered to court's jurisdictional maximum rather than ordering new trial. *Freedmen's Hospital v. L. Heath* (D.C. App. 1974, 318 A.2d 593).

Where trial court found that its jurisdictional limit required that verdict be set at \$50,000, though verdict in amount of \$150,000 had been returned, and court stated that judgment ranging up to \$100,000 would have been supportable, defendant was not prejudiced because court proceeded to apply statutory jurisdictional limit to reduce judgment rather than to offer choice of reduced verdict or new trial. *Id.*

Injunctions

Even in the absence of statutory enactments, a person engaged in the unlawful practice of law may be enjoined from conducting such activity. *J. H. Marshall & Associates, Inc. v. W. A. Bursleson* (D.C. App. 1973, 313 A.2d 587).

NOTES TO DECISIONS UNDER PRIOR LAW

Equitable powers

Where goal of plaintiff's suit for relief from action of District of Columbia police in enforcing vagrancy laws was equitable and of a type which could not be granted by Court of General Sessions which possessed exclusive jurisdiction of civil actions in which the claimed value did not exceed \$10,000, Court of General Sessions lacked authority to entertain suit and United States District Court for the District of Columbia had jurisdiction. *M. J. Gomez v. J. V. Wilson, Chief of Police, et al.* (1973, 477 F.2d 411, 155 U.S. App. D.C. 243; remanding 323 F. Supp. 87).

§ 11-922. Transfer of civil actions to Superior Court

CROSS REFERENCE

District Charter provisions relating to jurisdiction of Superior Court, see § 431 of title 11 Appendix.

NOTES TO DECISIONS

Abuse of discretion

On record indicating that plaintiff in civil rights action had shouted obscenity and expletives at police officer at downtown intersection, that plaintiff failed to appear to contest charge of disorderly conduct or seek equitable relief in Superior Court upon showing of lack of culpability and that plaintiff was apparently not distressed by handcuffs or interrogation, District Court did not abuse discretion in certifying record to Superior Court of the District of Columbia, even without permitting further opportunity to reformulate complaint, for insufficiency of amount in controversy. *M. James v. G. Lusby et al.* (1974, 499 F.2d 488, 162 U.S. App. D.C. 352).

Action for equitable relief

Action which was brought by borrowers against corporate lender and which alleged, inter alia, that lender had made loans requiring payment of interest in excess of statutory eight per cent limit, was not certifiable to the Superior Court under provision of this section that "In a civil action begun in the United States District Court for the District of Columbia before the effective date of the District of Columbia Reorganization Act of 1970 (other than an action for equitable relief) * * * the court may certify the action to the Superior Court for trial," since the complaint sought substantial declaratory and equitable relief, including injunctions and cancellation of notes and deeds of trust. *B. T. Himes et al. v. City Finance Company of Eastover, Inc., et al.* (1972, 474 F.2d 430, 154 U.S. App. D.C. 182).

Amount in controversy

Where there was issue before district court whether or not record before it showed that amount in controversy exceeded \$10,000, determination of such issue was preliminary to assumption of jurisdiction, and it was affirmative duty of trial court to inquire into such issue, whether or not it was raised by parties. *M. James v. G. Lusby et al.* (1974, 499 F.2d 488, 162 U.S. App. D.C. 352).

Standard to be applied by trial court in certifying case to court of local jurisdiction is that sum claimed by plaintiff controls if claim is apparently made in good faith. *Id.*

Both compensatory and punitive damages were to be considered in determining amount in controversy for jurisdictional purposes. *Id.*

Certification

The United States District Court for the District of Columbia may certify cause to the Superior Court of the District of Columbia only if the District Court finds that, the amount in controversy is not satisfied and that federal jurisdiction is not otherwise invoked. *W. H. Apton et al. v. J. V. Wilson (Chief of Police) et al.* (1974, 506 F.2d 83, 165 U.S. App. D.C. 22).

Where individuals, who were allegedly arrested during the "Mayday Demonstrations" of May, 1971, asserted claims against District of Columbia police officers and chief of police which arose directly under Fourth and Fifth Amendments, the United States District Court had "federal question" jurisdiction and it was improper to certify the cases against the District of Columbia defendants to the Superior Court for the District of Columbia. *Id.*

— Abuse of discretion

Federal District Court's certification to Superior Court of action by owners of apartment building to recover unincorporated franchise taxes paid under protest, for no reason other than the conclusion that the action would not justify a judgment in excess of \$50,000 exclusive of interest and costs, was an abuse of discretion where it did not appear that the amount paid in satisfaction of the deficiency was less than \$50,000 and District did not maintain that the amount in controversy was less than \$50,000. *E. P. Block et al. v. District of Columbia* (1974, 492 F.2d 646, 160 U.S. App. D.C. 380).

— Standard for review

Standard for review of order of certification from District Court to Superior Court is whether or not the trial court abused its discretion. *E. P. Block et al. v. District of Columbia* (1974, 492 F.2d 646, 160 U.S. App. D.C. 380).

Construction

Under provision of this section that "In a civil action begun in the United States District Court for the District of Columbia before the effective date of the District of Columbia Reorganization Act of 1970 (other than an action for equitable relief) * * * the court may certify the action to the Superior Court for trial," the parenthetical phrase is not intended to cover what is essentially a legal action which seeks equitable relief only of a character incidental to the main legal thrust of the action; on the other hand, if substantial equitable relief is sought as such, the District Court should retain jurisdiction even though legal relief is also sought. *B. T. Himes et al. v. City Finance Company of Eastover, Inc., et al.* (1972, 474 F. 2d 430, 154 U.S. App. D.C. 182).

Discretion of court

Exercise of general authority to certify cases to courts of local jurisdiction rests in sound discretion of district court. *M. James v. G. Lusby et al.* (1974, 499 F. 2d 488, 162 U.S. App. D.C. 352).

§ 11-923. Criminal jurisdiction; commitment

NOTES TO DECISIONS

Authority of court

Trial court had no power to grant new trial on ground of prejudicial joinder of defendants, where nothing in defendant's new trial motion raised question of severance or otherwise suggested that he was improperly joined with named codefendants and no motion for severance was pending, and ruling was thus action by court on its own motion beyond its jurisdiction and ineffective. *United States v. Honorable Leonard Braman* (D.C. App. 1974, 327 A. 2d 530; cert. denied 96 S. Ct. 562, 423 U.S. 1032).

Constitutionality

Congress did not violate article of Constitution pertaining to the judicial power of the United States by vesting jurisdiction over local felonies in the District of Columbia Superior Court. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; aff'd 93 S. Ct. 1670, 411 U.S. 389).

Under its constitutional power to legislate for the District of Columbia, Congress may provide for trying local criminal cases before judges who, in accordance with District of Columbia Code, are not accorded life tenure and protection against reduction in salary. *Id.*

Construction

Provision of this section providing that Superior Court has jurisdiction of any criminal case under any law applicable exclusively to District of Columbia, "any law" does not mean "any statute" but means any distinct, self-contained directive or prohibition; thus it is not required that a statutory section in its entirety apply exclusively to District in order for Superior Court to have jurisdiction of any prohibition in unseverable statute. *United States v. I. C. Thompson et ano.* (D.C. App. 1975, 347 A.2d 581).

Discovery of witnesses

Court had power to order Government in first-degree murder prosecution to produce names of alleged eyewitnesses to crime for use by the defense, where eye-wit-

nesses were passersby on street, defense counsel satisfied requirement of materiality by establishing that he was unable to locate eyewitnesses, such witnesses were necessary for preparation of defense, discovery of eyewitnesses was not so burdensome as to be unreasonable, Government was given opportunity to oppose discovery motion, and safeguards for witnesses were provided in conditions imposed in court's order. *United States v. W. J. Holmes* (D.C. App. 1975, 343 A.2d 272; rehearing denied 346 A.2d 517).

Jurisdiction

Section 22-505, proscribing interfering with member of police force operating in District of Columbia, proscribing assaulting district employee charged with supervision of juveniles confined in district facility located within District or elsewhere and proscribing assaulting member of fire department operating in District, contains three different "laws," within meaning of this section, providing that Superior Court has jurisdiction of any criminal case under any law applicable exclusively to District; thus Superior Court has jurisdiction of prosecution for assault on police officer in District, even if that Court has no jurisdiction over prosecution for assault on supervisor of confined juvenile on ground that it is an extra-territorial offense. *United States v. I. C. Thompson et ano.* (D.C. App. 1975, 347 A.2d 581).

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 11-942. Subpenas

NOTES TO DECISIONS

Compliance, continuing obligation

Where subpoena served on prospective witness in criminal case specified a February 11 appearance date, but prosecutor informed witness that she would be informed by telephone of the exact date and time her testimony would be required and in early March witness was notified to appear to testify on March 12 but witness failed to appear, the telephone standby procedure did not vitiate the continuing efficacy of the subpoena and witness's failure to appear was a criminal contempt of court and not merely a violation of prosecutor's direction to witness. *In the Matter of Ragland* (D.C. App. 1975, 343 A.2d 558).

§ 11-944. Contempt power

NOTES TO DECISIONS

Abuse of discretion

Trial judge did not abuse discretion in finding criminal defendant guilty of contempt, where, following exchange in which trial judge ordered codefendant to be quiet, defendant spoke out three times stating that he wanted to represent himself, trial judge then told him not to address court unless he was given permission, but defendant continued to answer court directly, even after a further warning, and, when trial judge told him to stand up and asked him if he had heard warning, he finally admitted that he had heard the warning. *L. Irby v. United States* (D.C. App. 1975, 342 A.2d 33).

Contempt

Although counsel should make all legitimate objections in support of client's interest, conduct of defense counsel, against whom a summary conviction of contempt was issued during criminal trial, exceeded permissible bounds where his persistent defiance of trial court's authority resulted in his forceful removal from courtroom and the grant of a mistrial. *In the Matter of L. Nesbitt* (D.C. App. 1975, 345 A.2d 154).

Evidence—Sufficiency

Evidence supports findings that defense counsel, who was summarily convicted for contempt during criminal trial, repeatedly and willfully refused to obey directions of court to be seated, persistently and contumaciously refused to respond to direct and simple question put to him by court and, in a voice clearly audible to jury, flagrantly defied authority of court by refusing to leave the bench and take his seat. *In the Matter of L. Nesbitt* (D.C. App. 1975, 345 A.2d 154).

Where defendant, who had been given lineup order directing that he not alter his facial appearance prior to lineup and who had had at time of the order a full head of hair and a moustache and goatee, had his head and face shaved before preliminary hearing on the basis of alleged ringworm condition which had existed for several months, the defendant made no showing of exigent circumstances warranting failure to obtain court's permission and determination that he possessed the intent required to support contempt conviction was justified. *In re R. A. Jackson* (D.C. App. 1974, 328 A. 2d 377).

Where attorney, who had previously informed judge of conflict between two scheduled court appearances, was confronted by two United States marshals who intended to escort him to second judge's courtroom, where attorney directed clerk to get in touch with first judge, and where clerk told attorney that judge had told him that attorney was excused to go to the other courtroom, attorney could reasonably construe the excusal as authorizing him to commence trial in the second case and attorney's actions in so doing did not support finding that attorney had the requisite intent to commit a criminal contempt by failing to appear for trial before the first judge. *In the Matter of L. Nesbitt* (D.C. App. 1973, 313 A. 2d 576).

Fine

Two hundred dollar fine for contempt upon failure of counsel to return directly to trial court as ordered after being allowed to attend hearing in another court is not excessive. *In the Matter of S. Rosen* (D.C. App. 1974, 315 A. 2d 151; cert. denied 95 S. Ct. 224, 419 U.S. 964).

In presence of court

Deliberate and knowing violation of order that trial counsel return directly from another court for trial which has been postponed to enable counsel to attend hearing at the other court is a contempt committed "in the presence of the court" and is properly disposed of summarily, without hearing before another judge. *In the Matter of S. Rosen* (D.C. App. 1974, 315 A. 2d 151; cert. denied 95 S. Ct. 224, 419 U.S. 964).

Subpena, failure to appear

Where subpoena served on prospective witness in criminal case specified a February 11 appearance date, but prosecutor informed witness that she would be informed by telephone of the exact date and time her testimony would be required and in early March witness was notified to appear to testify on March 12 but witness failed to appear, the telephone standby procedure did not vitiate the continuing efficacy of the subpoena and witness's failure to appear was a criminal contempt of court and not merely a violation of prosecutor's direction to witness. *In the Matter of Ragland* (D.C. App. 1975, 343 A.2d 558).

Summary disposition

Where attorney did not consciously and intentionally absent himself from court in criminal case, trial court erred in exercising its summary power to punish attorney for contempt. *In the Matter of J. E. Brown* (D.C. App. 1974, 320 A.2d 92).

Tardiness

Tardiness or non-appearance may be punished as contempt committed in presence of court. *In the Matter of J. E. Brown* (D.C. App. 1974, 320 A.2d 92).

Unauthorized practice of law

The unauthorized practice of law constitutes contempt of court and the court has inherent power to punish such conduct and prevent its recurrence. *J. H. Marshall & Associates, Inc. v. W. A. Bursleson* (D.C. App. 1973, 313 A. 2d 587).

§ 11-946. Rules of court

CROSS REFERENCES

Attorneys, rules respecting, see § 11-2501.

District of Columbia Court of Appeals rules, see § 11-743.

NOTES TO DECISIONS

Declaratory judgment

Declaratory judgment authority does not supersede rules of justiciability. *E. R. Smith v. D. L. Smith* (D.C. App. 1973, 310 A. 2d 229).

Intervention

Where class of taxpayers sought to be represented by purported intervenors in suit brought on behalf of city commercial property owners seeking declaratory judgment that practice of assessing commercial property at higher percentage of market value than residential property violated section 47-713 and the Fifth Amendment had economic interest in outcome of suit, and District of Columbia, which had agreed to set up single level of assessment and had not denied that its dual assessments violated that section and Fifth Amendment principles of equal protection, did not adequately represent such taxpayers, proposed intervenors should be allowed to intervene under Superior Court rule on behalf of all taxpayers other than commercial ones. *Calvin-Humphrey et al. v. District of Columbia et al.* (D.C. App. 1975, 340 A.2d 795).

Practice of law

A court has an inherent right to make rules governing the practice of law before it and to promulgate rules concerning who may practice law before it. *J. H. Marshall & Associates, Inc. v. W. A. Bursleson* (D.C. App. 1973, 313 A. 2d 587).

A court has inherent power, by virtue of its existence as part of judicial system, to regulate and control the practice of law and to protect the public and the administration of justice by forbidding the unwarranted intrusion of unauthorized and unskilled persons into the practice of law. *Id.*

Chapter 11.—FAMILY DIVISION OF THE SUPERIOR COURT

§ 11-1101. Exclusive jurisdiction

NOTES TO DECISIONS

Construction

Even if United States attorney's election to charge juvenile as an adult is made after he has been subject to jurisdiction of Family Division by reason of a delinquency petition filed against him, attorney's statutory authority to determine whether juvenile, who is 16 years of age and who is charged with certain enumerated offenses, should be charged as adult is unfettered by section 16-2307, which provides that, on corporation counsel's motion for transfer of child for trial as adult, transfer can be ordered only after a hearing to determine prospects for child's rehabilitation in Family Division. *L. B. Brown v. United States* (D.C. App. 1975, 343 A.2d 48).

Jurisdiction

Fact that verdict of not guilty of armed robbery was returned, in proceeding in which 16-year-old accused was charged as an adult, does not require that verdicts of guilty of robbery and assault with a dangerous weapon be certified to Family Division for disposition. *L. B. Brown v. United States* (D.C. App. 1975, 343 A.2d 48).

Chapter 12.—TAX DIVISION OF THE SUPERIOR COURT

§ 11-1201. Exclusive jurisdiction

NOTES TO DECISIONS

Exclusive remedy

Exclusive remedy of petitioner, which was denied exemption as an institution and assessed taxes due by the District of Columbia Department of Finance and Revenue, Property Assessment Division and which then sought review in the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act, lay in the Tax Division of the Superior Court. *The Washington Theater Club, Inc. v. District of Columbia Department of Finance and Revenue, Property Assessment Division* (D.C. App. 1973, 302 A. 2d 231; cert. denied 94 S.Ct. 63, 414 U.S. 831).

§ 11-1202. Abolition of other remedies

NOTES TO DECISIONS

Construction

Where statutory period for challenging excessive tax payment had expired before sections of Court Reorgan-

zation Act of 1970 putatively eliminating common-law remedies became effective, the Act could not be construed to curtail or destroy the preexisting common-law rights of property owners to maintain an action at common law for recovery from the District of Columbia. *E. P. Block et al. v. District of Columbia* (1974, 492 F.2d 646, 160 U.S. App. D.C. 380).

Exclusive remedy

Exclusive remedy of petitioner, which was denied exemption as an institution and assessed taxes due by the District of Columbia Department of Finance and Revenue, Property Assessment Division and which then sought review in the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act, lay in the Tax Division of the Superior Court. *The Washington Theater Club, Inc. v. District of Columbia Department of Finance and Revenue, Property Assessment Division* (D.C. App. 1973, 302 A. 2d 231; cert. denied 94 S.Ct. 63, 414 U.S. 831).

Chapter 13.—SMALL CLAIMS AND CONCILIATION BRANCH OF THE SUPERIOR COURT

SUBCHAPTER II.—JURISDICTION AND PROCEDURES

§ 11-1321. Exclusive jurisdiction of small claims

CROSS REFERENCE

Small claims and conciliation procedure, see § 16-3901 et seq.

Chapter 15.—JUDGES OF THE DISTRICT OF COLUMBIA COURTS

SUBCHAPTER I.—APPOINTMENT; QUALIFICATIONS; SERVICE OF JUDGES

§ 11-1501. Appointment and qualifications of judges

CROSS REFERENCES

District Charter provisions,

Judicial Nomination Commission, see § 434 of title 11 Appendix.

Nomination and appointment of judges, see § 433 of title 11 Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 433 of title 11, Appendix.

§ 11-1502. Tenure

CROSS REFERENCE

District Charter provisions relating to tenure of judges, see § 431 of title 11 Appendix.

§ 11-1503. Designation of Chief Judge

CROSS REFERENCE

District Charter provisions relating to designation of chief judge of a District of Columbia court, see § 431 of title 11 Appendix.

SUBCHAPTER II.—THE DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

§ 11-1521. Establishment of Commission

CROSS REFERENCES

Continuation of Commission, see § 718 of title 11 Appendix.

District Charter provisions relating to establishment of Commission, and power to suspend, retire, or remove judges, see §§ 431, 432 of title 11 Appendix.

§ 11-1522. Membership

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

District Charter provisions relating to Commission membership, see § 431 of title 11 Appendix.

§ 11-1523. Terms of office; vacancy; continuation of service by a member

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

District Charter provisions relating to terms of office and vacancies on the Commission, see § 431 of title 11 Appendix.

§ 11-1524. Compensation

CROSS REFERENCE

District Charter provisions relating to compensation, see § 431 of title 11 Appendix.

§ 11-1525. Operations; personnel; administrative services

CROSS REFERENCE

District Charter provisions relating to rules and regulations of the Commission, see § 431 of title 11 Appendix.

§ 11-1526. Removal; involuntary retirement; proceedings

CROSS REFERENCE

District Charter provisions relating to removal, suspension, and involuntary retirement of judges, see § 432 of title 11 Appendix.

SUBCHAPTER III.—RETIREMENT

§ 11-1561. Definitions

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11-1568, 11-1569, and section 718 of title 11 Appendix.

§ 11-1562. Eligibility for retirement

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1563. Withholding of retirement payments; lump-sum credit

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1564. Computation of retirement salary; election to credit other service

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1566. Survivor annuity; election; relinquishment

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1567. Survivor annuity; payments to fund

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1568. Survivor annuity; entitlement; computation

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1569. Survivor annuity; payment; order of precedence

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1570. Retirement and annuity fund

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-1571. Periodic increases; existing rights

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 718 of title 11 Appendix.

Chapter 17.—ADMINISTRATION OF DISTRICT OF COLUMBIA COURTS

SUBCHAPTER I.—COURT ADMINISTRATION

§ 11-1701. Administration of District of Columbia court system

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—COURT PERSONNEL

§ 11-1731. Reports of other personnel

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER III.—DUTIES AND RESPONSIBILITIES

§ 11-1743. Annual budget

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

District Charter provisions relating to budget of the District of Columbia Courts, see § 445 of title 11 Appendix.

Joint Committee to prepare and submit budget for furnishing representation to indigents in criminal cases, see § 11-2607.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2607.

§ 11-1745. Reports and records

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 19.—JURIES AND JURORS

§ 11-1902. Single jury selection system

NOTES TO DECISIONS

Composition

Record established that there was no purposeful exclusion of any cognizant group, whether of youth or of any other coherent, identifiable class, in the selection of jurors. *United States v. T. B. Diggs* (1975, 522 F.2d 1310, 173 U.S. App. D.C. 95; rehearing en banc denied 535 F.2d 1299, — U.S. App. D.C. —).

In absence of allegation of systematic and intentional exclusion of some recognizable class from jury, and in absence of factual hearing into manner of selection of petit jury panels for scheduled trials, defendant's challenge which merely went to composition of particular panel assigned for final selection was insufficient. *M. H. Green, Jr. v. United States* (D.C. App. 1973, 304 A.2d 286).

In jury selection, burden is on defendant to show that some recognizable class has been improperly excluded from jury, and improper exclusion must show a systematic and intentional exclusion of the class. *Id.*

Chapter 23.—MEDICAL EXAMINER

§ 11-2301. Medical Examiner; Deputies; appointment, qualifications, and compensation

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-2302. Supporting services and facilities**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-2303. Former duties of coroner; oaths; teaching**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-2307. Autopsy by pathologist other than medical examiner**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 11-2309. Records; reports; fees for other services**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 25.—ATTORNEYS**§ 11-2501. Admission to bar; regulations; prior admission****NOTES TO DECISIONS****Rules for admission**

Although term "good moral character" is term of broad dimensions and can be defined in many ways, no better test for purpose of admission to bar is known and a candidate for admission to bar must meet such standard. *In the Matter of R. J. Heller for Admission to the bar of this court* (D.C. App. 1975, 333 A.2d 401).

A candidate for admission to bar who knowingly pleads guilty to crime of receiving stolen goods and does not honor commitments and obligations fails to carry his required burden of demonstrating he is qualified for admission to bar. *Id.*

Unauthorized practice of law

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

Where one is engaged in the unauthorized practice of law before the court, the court not only has authority to consider the question of unauthorized practice and to dismiss plaintiff's suit, but it also has the power and responsibility to enjoin further activities which constitute the unauthorized practice of law. *J. H. Marshall & Associates, Inc. v. W. A. Burleson* (D.C. App. 1973, 313 A.2d 587).

Member of the bar and officer of the court had duty to bring to the attention of the court activities of collection agency which constituted the unauthorized practice of law. *Id.*

The operation of a collection agency, does not in and of itself, necessarily constitute the unauthorized practice of law. *Id.*

Collection agency cannot properly interpose itself between a creditor and an attorney seeking to collect the creditor's claim; to do so either directly or indirectly, by assignment or otherwise, constitutes the unauthorized practice of law. *Id.*

Collection agency may not solicit claim for legal action on a contingent fee basis, may not advise the creditor when to start suit, and may not employ an attorney to institute and carry on the litigation under the control and direction of the agency in order to enforce the legal rights of the creditor. *Id.*

Collection agency did not by employing an attorney to actually present himself in court, remove itself from the sphere of unauthorized practice. *Id.*

Collection agency did not become entitled to utilize practices which constituted the unauthorized practice of law merely because it received the grant by corporate charter from the District of Columbia to conduct its collection business and to do what is necessary to carry out its purposes. *Id.*

Collection agency was entitled to sue and to attempt to collect claims, to charge a fee therefor, and to purchase claims outright for a valid and legally enforceable consideration without engaging in the unauthorized practice of law. *Id.*

Collection agency was not entitled to advise creditors when to bring suit, to solicit or receive assignments of claims or debt collection under which payment, to the assignor or creditor, is dependent on collection from the debtor and which contemplates or authorizes enforcement by suit, brought in the name of either party, by an attorney at law. *Id.*

Collection agency was not entitled to employ a lawyer on behalf of the creditor or an assignor without specific written authority to do so, to interpose itself between the creditor and the lawyer handling legal collection on the claim, to institute or maintain legal action for others or to appropriate to its own use as attorney fees sum adjudged against debtors on assigned claim except where such judgment is its bona fide property. *Id.*

§ 11-2502. Censure, suspension, or disbarment for cause**NOTES TO DECISIONS****Misconduct**

Violation of rule prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation warrants 30-day suspension. *District of Columbia Bar v. R. G. Kleindienst* (D.C. App. 1975, 345 A.2d 146).

Power of court

Court of Appeals may, in a disciplinary proceeding, consider more severe disciplinary action than that recommended by disciplinary board. *District of Columbia Bar v. R. G. Kleindienst* (D.C. App. 1975, 345 A.2d 146).

§ 11-2503. Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment**NOTES TO DECISIONS****Conviction of crime**

Judgment of conviction in federal court for a felony is binding upon the district court and the Circuit Court of Appeals and is not subject to collateral attack in a disbarment proceeding. *J. J. Laughlin v. United States* (1972, 474 F.2d 444, 154 U.S. App. D.C. 196; cert. denied 93 S.Ct. 2784, 412 U.S. 941).

Chapter 26.—REPRESENTATION OF INDIGENTS IN CRIMINAL CASES**Sec.**

11-2601. Plan for furnishing representation to indigents in criminal cases.

11-2602. Appointment of counsel.

11-2603. Duration and substitution of appointments.

11-2604. Payment for representation.

11-2605. Services other than counsel.

Sec.

11-2606. Receipt of other payments.

11-2607. Preparation of budget.¹

11-2608. Authorization of appropriations.

11-2609. Authority of counsel.¹

AMENDMENT

1974—This chapter was added by Act Sept. 3, 1974, Pub. L. 93-412, § 2.

§ 11-2601. Plan for furnishing representation of indigents in criminal cases

The Joint Committee on Judicial Administration shall place in operation, within ninety days after the effective date of this chapter, in the District of Columbia a plan for furnishing representation to any person in the District of Columbia who is financially unable to obtain adequate representation—

(1) who is charged with a felony, or misdemeanor, or other offense for which the sixth amendment to the Constitution requires the appointment of counsel or for whom, in a case which he faces loss of liberty, any law of the District of Columbia requires the appointment of counsel;

(2) who is under arrest, when such representation is required by law;

(3) who is charged with violating a condition of probation or parole² in custody as a material witness, or seeking collateral relief, as provided in—

(A) Section 23-110 of the District of Columbia Code (remedies on motion attacking sentence),

(B) Chapter 7 of title 23 of the District of Columbia Code (extradition and fugitives from justice),

(C) Chapter 19 of title 16 of the District of Columbia Code (habeas corpus),

(D) Section 928 of the Act of March 8, 1901 (D.C. Code, sec. 24-302) (commitment of mentally ill person while serving sentence);

(4) who is subject to proceedings pursuant to chapter 5 of title 21 of the District of Columbia Code (hospitalization of the mentally ill);

(5) who is a juvenile and alleged to be delinquent or in need of supervision.

Representation under the plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. The plan shall include a provision for private attorneys, attorneys furnished by the Public Defender Service, and attorneys and qualified students participating in clinical programs. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1090.)

SHORT TITLE

The first section of Act Sept. 3, 1974, Pub. L. 93-412, provided: "That this Act [enacting this chapter and provisions set out under this section, and amending 18 U.S.C. 3006A] may be cited as the 'District of Columbia Criminal Justice Act'."

EFFECTIVE DATE

Section 4 of Act Sept. 3, 1974, Pub. L. 93-412, provided: "This Act [enacting this chapter and provisions set out under this section, and amending 18 U.S.C. 3006A] shall take effect upon the date of its enactment. Any person appointed on or after July 1, 1974, but prior to the commencing date of the plan referred to in section 11-2601 of the District of Columbia Code (as added by section 2 of this Act), by a judge of the Superior Court or

the District of Columbia Court of Appeals to furnish to any person in the District of Columbia, who is financially unable to obtain adequate representation, that representation and those services referred to in such section 11-2601, may be compensated and reimbursed for such representation and services rendered, including expenses incurred therewith, upon filing a claim for payment. Payment shall not be allowed in excess of the amount authorized in accordance with those sections added to the District of Columbia Code by such section 2."

CROSS REFERENCES

Representation of indigents in Federal courts, see 18 U.S.C. 3006A.

Representation of indigents by Public Defender Service, see § 2-2222.

Right to counsel of child alleged to be delinquent or in need of supervision, see § 16-2304.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2607.

§ 11-2602. Appointment of counsel

Counsel furnishing representation under the plan shall in every case be selected from panels of attorneys designated and approved by the courts. In all cases where a person faces a loss of liberty and the Constitution or any other law requires the appointment of counsel, the court shall advise the defendant or respondent that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant or respondent waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant or respondent is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The court shall appoint separate counsel for defendants or respondents having interests that cannot properly be represented by the same counsel, or when other good cause is shown. In all cases covered by this Act where the appointment of counsel is discretionary, the defendant or respondent shall be advised that counsel may be appointed to represent him if he is financially unable to obtain counsel, and the court shall in all such cases advise the defendant or respondent of the manner and procedures by which he may request the appointment of counsel. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1090.)

REFERENCE IN TEXT

"This Act", referred to in text, appears in the original but probably should be "this chapter".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2603.

§ 11-2603. Duration and substitution of appointments

A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the court through appeals, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in section 2606 of this chapter, as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court finds that

¹ So in original. Does not conform to section catchline.

² A comma probably should appear after "parole".

the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in section 2602, and authorize payment as provided in section 2604, as the interests of justice may dictate. The court may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1091.)

REFERENCES IN TEXT

"Section 2606 of this chapter", "section 2602", and "section 2604", referred to in text, refer to sections 11-2606, 11-2602, and 11-2604, respectively.

NOTES TO DECISIONS

Reduction of sentence proceeding

Where prisoner's motion for reduction of sentence was patently deficient and did not present sort of issue requiring appointment of counsel in order to satisfy due process standards of fundamental fairness, trial court did not err in denying prisoner's request for appointment of counsel to assist in preparation of motion. *B. J. Burrell v. United States* (D.C. App. 1975, 332 A.2d 344).

§ 11-2604. Payment for representation

(a) Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be compensated at a rate fixed by the Joint Committee on Judicial Administration, not to exceed the hourly scale established by the provisions of section 3006A(d)(1) of title 18, United States Code. Such attorney shall be reimbursed for expenses reasonably incurred.

(b) For representation of a defendant before the Superior Court or before the District of Columbia Court of Appeals, as the case may be, the compensation to be paid to an attorney shall not exceed the maximum amounts established by section 3006A(d)(2) of title 18, United States Code, in the corresponding kind of case or proceeding.

(c) Claims for compensation and reimbursement in excess of any maximum amount provided in subsection (b) of this section may be approved for extended or complex representation whenever such payment is necessary to provide fair compensation. Any such request for payment shall be submitted by the attorney for approval by the chief judge of the Superior Court upon recommendation of the presiding judge in the case or, in cases before the District of Columbia Court of Appeals, approval by the chief judge of the Court of Appeals upon recommendation of the presiding judge in the case. A decision shall be made by the appropriate chief judge in the case of every claim filed under this subsection.

(d) A separate claim for compensation and reimbursement shall be made to the Superior Court for representation before that court, and to the District of Columbia Court of Appeals for representation before that court. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished other than before the Superior Court or the District of Columbia Court of Appeals, claims shall be submitted to the Superior

Court which shall fix the compensation and reimbursement to be paid.

(e) For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(f) If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28, United States Code. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1091.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2603.

§ 11-2605. Services other than counsel

(a) Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

(b) Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services, excluding the preparation of reporter's transcript, without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed \$150 or the rate provided by section 3006A(e)(2) of title 18, United States Code, whichever is higher, and expenses reasonably incurred.

(c) Compensation to be paid to a person for services rendered by him to a person under this subsection shall not exceed \$300, or the rate provided by section 3006A(e)(3) of title 18, United States Code, whichever is higher, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the presiding judge in the case. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1092.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2606.

§ 11-2606. Receipt of other payments

(a) Whenever the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, or to any person or organization authorized pursuant to section 2605 of this title to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

(b) Any person compensated, or entitled to be compensated, for any services rendered under this

chapter who shall seek, ask, demand, receive, or offer to receive, any money, goods, or services in return therefor from or on behalf of a defendant or respondent shall be fined not more than \$1,000 or imprisoned not more than one year, or both. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1092.)

REFERENCE IN TEXT

"Section 2605 of this title", referred to in subsec. (a), refers to section 11-2605.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2603.

§ 11-2607. Preparation of Budget

The joint committee shall prepare and annually submit to the Commissioner of the District of Columbia, in conformity with section 1743 of this title, or to his successor in accordance with section 445 of the District of Columbia Self-Government and Governmental Reorganization Act, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for furnishing representation by private attorneys to persons entitled to representation in accordance with section 2601 of this title. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1093.)

REFERENCES IN TEXT

"Section 1743 of this title" and "section 2601 of this title", referred to in text, refer to sections 11-1743 and 11-2601, respectively.

Section 445 of the District of Columbia Self-Government and Governmental Reorganization Act, referred to in text, is classified to section 445 of title 11 Appendix.

§ 11-2608. Authorization of appropriations

There are hereby authorized to be appropriated, out of any moneys in the Treasury credited to the District of Columbia, such funds as may be necessary for the administration of this chapter for fiscal years 1975 and 1976. When so specified in appropriation Acts, such appropriations shall remain available until expended. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1093.)

§ 11-2609. Authority of Council

Section 602(a)(4) of the District of Columbia Self-Government and Governmental Reorganization Act shall not apply to this chapter. (Added Sept. 3, 1974, Pub. L. 93-412, § 2, 88 Stat. 1093.)

REFERENCE IN TEXT

Section 602(a)(4) of the District of Columbia Self-Government and Governmental Reorganization Act, referred to in text, is classified to § 1-147(a)(4).

TITLE 11.—APPENDIX

DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT

TITLE IV—THE DISTRICT CHARTER

PART C—THE JUDICIARY

Act Dec. 24, 1973, Pub. L. 93-198, title IV, Part C, §§ 431-434, 87 Stat. 792.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1-125.

§ 431. Judicial powers.

(a) The judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia. The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District and of any criminal case under any law applicable exclusively to the District. The Superior Court has no jurisdiction over any civil or criminal matter over which a United States court has exclusive jurisdiction pursuant to an Act of Congress. The Court of Appeals has jurisdiction of appeals from the Superior Court and, to the extent provided by law, to review orders and decisions of the Mayor, the Council, or any agency of the District. The District of Columbia courts shall also have jurisdiction over any other matters granted to the District of Columbia courts by other provisions of law.

(b) The chief judge of a District of Columbia court shall be designated by the District of Columbia Judicial Nominating Commission established by section 434 from among the judges of the court in regular active service, and shall serve as chief judge for a term of four years or until his successor is designated, except that his term as chief judge shall not extend beyond the chief judge's term as a judge of a District of Columbia court. He shall be eligible for redesignation as chief judge.

(c) A judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 [July 29, 1970] shall be appointed for a term of fifteen years subject to mandatory retirement at age seventy or removal, suspension, or involuntary retirement pursuant to section 432 and upon completion of such term, such judge shall continue to serve until reappointed or his successor is appointed and qualifies. A judge may be reappointed as provided in subsection (c) of section 433.

(d) (1) There is established a District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter referred to as the "Tenure Commission"). The Tenure Commission shall consist of seven members selected in accordance with the provisions of subsection (e). Such members shall serve for terms of six years, except that the member selected in accordance with subsection (e) (3) (A) shall serve for five years; of the members first selected in accordance with subsection (e) (3) (B), one member shall serve for three years and one member shall serve

for six years; of the members first selected in accordance with subsection (e) (3) (C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (e) (3) (D) shall serve for six years; and the member first appointed in accordance with subsection (e) (3) (E) shall serve for six years. In making the respective first appointments according to subsections (e) (3) (B) and (e) (3) (C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(2) The Tenure Commission shall act only at meetings called by the Chairman or a majority of the Tenure Commission held after notice has been given of such meeting to all Tenure Commission members.

(3) The Tenure Commission shall choose annually, from among its members, a Chairman and such other officers as it may deem necessary. The Tenure Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Tenure Commission.

(4) The District government shall furnish to the Tenure Commission, upon the request of the Tenure Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Tenure Commission properly to perform its functions. Information so furnished shall be treated by the Tenure Commission as privileged and confidential.

(e) (1) No person may be appointed to the Tenure Commission unless he—

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least ninety days immediately prior to his appointment; and

(C) is not an officer or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 202¹ of title 5 of the United States Code); and (except with respect to the person appointed or designated according to subsection (b) (4) (D)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

¹ So in original. Probably should be section "102".

(2) Any vacancy on the Tenure Commission shall be filled in the same manner is¹ which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of his predecessor.²

(3) In addition to all other qualifications listed in this section, lawyer members of the Tenure Commission shall have the qualifications prescribed for persons appointed as judges of the District of Columbia courts. Members of the Tenure Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both or³ whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall be an active or retired Federal judge serving in the District.

No person may serve at the same time on both the District of Columbia Judicial Nomination Commission and on the District of Columbia Commission on Judicial Disabilities and Tenure.

(f) Any member of the Tenure Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(g) The Tenure Commission shall have the power to suspend, retire, or remove a judge of a District of Columbia court as provided in section 432. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 431, 87 Stat. 792.)

REFERENCE IN TEXT

"This Act", referred to in subsec. (d) (3), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

CROSS REFERENCES

Prior law,

Commission on Judicial Disabilities and Tenure, see § 11-1521 et seq.

Designation of chief judge, see § 11-1503.

Judicial power, generally, see § 11-101.

Jurisdiction of Court of Appeals, see §§ 11-721, 11-722.

Jurisdiction of Superior Court, see §§ 11-921, 11-922.

Tenure of judges, see § 11-1502.

§ 432. Removal, suspension, and involuntary retirement of Judges.

(a) (1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Tenure Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Tenure Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Tenure Commission of—

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Tenure Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his judicial duties, and (2) the Tenure Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c) (1) A judge of a District of Columbia court shall be suspended, without salary—

(A) upon—

(i) proof of his conviction of a crime referred to in subsection (a) (1) which has not become final, or

(ii) the filing of an order of removal under subsection (a) (2) which has not become final; and

(B) upon the filing by the Tenure Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover his salary and all rights and privileges of his office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as he may be entitled, upon the filing by the Tenure Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall

¹ So in original. Probably should be "in".

² So in original. Probably should be "predecessor".

³ So in original. Probably should be "of".

be reinstated and shall recover his judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of his office.

(3) A judge of a District of Columbia court shall be suspended from all or part of his judicial duties, with salary, if the Tenure Commission, upon concurrence of five members, (A) orders a hearing for the removal or retirement of the judge pursuant to this subchapter and determines that his suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Tenure Commission) but in no event later than the termination of all appeals. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 432, 87 Stat. 794.)

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

See note under § 431 of this Appendix.

CROSS REFERENCE

Prior law relating to removal and involuntary retirement of judges, see § 11-1526.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 431 of this Appendix.

§ 433. Nomination and appointment of judges.

(a) Except as provided in section 434(d)(1), the President shall nominate, from the list of persons recommended to him by the District of Columbia Judicial Nomination Commission established under section 434, and, by and with the advice and consent of the Senate, appoint all judges of the District of Columbia courts.

(b) No person may be nominated or appointed a judge of a District of Columbia court unless he—

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding his nomination or for such five years has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or the District of Columbia government;

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to his nomination, and shall retain such residency as long as he serves as such judge, except judges appointed prior to the effective date of this part who retain residency as required by section 1501(a) of title 11 of the District of Columbia Code shall not be required to be residents of the District to be eligible for reappointment or to serve any term to which reappointed;

(4) is recommended to the President, for such nomination and appointment, by the District of Columbia Judicial Nomination Commission; and

(5) has not served, within a period of two years prior to his nomination, as a member of the Tenure Commission or of the District of Columbia Judicial Nomination Commission.

(c) Not less than three months prior to the expiration of his term of office, any judge of the District of Columbia courts may file with the Tenure Commission a declaration of candidacy for reappointment. If a declaration is not so filed by any judge, a vacancy shall result from the expiration of his term of office and shall be filled by appointment as provided in subsections (a) and (b). If a declaration is so filed, the Tenure Commission shall, not less than thirty days prior to the expiration of the declaring candidate's term of office, prepare and submit to the President a written evaluation of the declaring candidate's performance during his present term of office and his fitness for reappointment to another term. If the Tenure Commission determines the declaring candidate to be exceptionally well qualified or well qualified for reappointment to another term, then the term of such declaring candidate shall be automatically extended for another full term, subject to mandatory retirement, suspension, or removal. If the Tenure Commission determines the declaring candidate to be qualified for reappointment to another term, then the President may nominate such candidate, in which case the President shall submit to the Senate for advice and consent the renomination of the declaring candidate as judge. If the President determines not to so nominate such declaring candidate, he shall nominate another candidate for such position only in accordance with the provisions of subsections (a) and (b). If the Tenure Commission determines the declaring candidate to be unqualified for reappointment to another term, then the President shall not submit to the Senate for advice and consent the renomination of the declaring candidate as judge and such judge shall not be eligible for reappointment or appointment as a judge of a District of Columbia court. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 433, 87 Stat. 795.)

REFERENCE IN TEXT

"The effective date of this part", referred to in subsection (b)(3), refers to the effective date of Part C of title IV of Act Dec. 24, 1973. The effective date of such Part C is Jan. 2, 1975, see section 771(c) of such Act which is set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

See note under § 431 of this Appendix.

CROSS REFERENCE

Prior law relating to appointment and qualification of judges, see § 11-1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 431, 434 of this Appendix.

§ 434. District of Columbia Judicial Nomination Commission.

(a) There is established for the District of Columbia the District of Columbia Judicial Nomination Commission (hereafter in this section referred to as the "Commission"). The Commission shall consist of seven members selected in accordance with the provisions of subsection (b). Such members shall serve for terms of six years, except that the member selected in accordance with subsection (b)(4)(A) shall serve for five years; of the members first selected in accordance with subsection (b)(4)(B),

one member shall serve for three years and one member shall serve for six years; of the members first selected in accordance with subsection (b) (4) (C), one member shall serve for a term of three years and one member shall serve for five years; the member first selected in accordance with subsection (b) (4) (D) shall serve for six years; and the member first appointed in accordance with subsection (b) (4) (E) shall serve for six years. In making the respective first appointments according to subsections (b) (4) (B) and (b) (4) (C), the Mayor and the Board of Governors of the unified District of Columbia Bar shall designate, at the time of such appointments, which member shall serve for the shorter term and which member shall serve for the longer term.

(b) (1) No person may be appointed to the Commission unless he—

(A) is a citizen of the United States;

(B) is a bona fide resident of the District and has maintained an actual place of abode in the District for at least 90 days immediately prior to his appointment; and

(C) is not a member, officer, or employee of the legislative branch or of an executive or military department or agency of the United States (listed in sections 101 and 202¹ of title 5 of the United States Code); and (except with respect to the person appointed or designated according to subsection (b) (4) (D)) is not an officer or employee of the judicial branch of the United States, or an officer or employee of the District government (including its judicial branch).

(2) Any vacancy on the Commission shall be filled in the same manner in which the original appointment was made. Any person so appointed to fill a vacancy occurring other than upon the expiration of a prior term shall serve only for the remainder of the unexpired term of his predecessor.

(3) It shall be the function of the Commission to submit nominees for appointment to positions as judges of the District of Columbia courts in accordance with section 433 of this Act.

(4) In addition to all other qualifications listed in this section, lawyer members of the Commission shall have the qualifications prescribed for persons appointed as judges for the District of Columbia courts. Members of the Commission shall be appointed as follows:

(A) One member shall be appointed by the President of the United States.

(B) Two members shall be appointed by the Board of Governors of the unified District of Columbia Bar, both of whom shall have been engaged in the practice of law in the District for at least five successive years preceding their appointment.

(C) Two members shall be appointed by the Mayor, one of whom shall not be a lawyer.

(D) One member shall be appointed by the Council, and shall not be a lawyer.

(E) One member shall be appointed by the chief judge of the United States District Court for the District of Columbia, and such member shall

be an active or retired Federal judge serving in the District.

(5) Any member of the Commission who is an active or retired Federal judge shall serve without additional compensation. Other members shall receive the daily equivalent at the rate provided by grade 18 of the General Schedule, established under section 5332 of title 5 of the United States Code, while actually engaged in service for the Commission.

(c) (1) The Commission shall act only at meetings called by the Chairman or a majority of the Commission held after notice has been given of such meeting to all Commission members.

(2) The Commission shall choose annually, from among its members, a Chairman, and such other officers as it may deem necessary. The Commission may adopt such rules of procedures not inconsistent with this Act as may be necessary to govern the business of the Commission.

(3) The District government shall furnish to the Commission, upon the request of the Commission, such records, information, services, and such other assistance and facilities as may be necessary to enable the Commission properly to perform its function. Information so furnished shall be treated by the Commission as privileged and confidential.

(d) (1) In the event of a vacancy in any position of the judge of a District of Columbia court, the Commission shall, within thirty days following the occurrence of such vacancy, submit to the President, for possible nomination and appointment, a list of three persons for each vacancy. If more than one vacancy exists at one given time, the Commission must submit lists in which no person is named more than once and the President may select more than one nominee from one list. Whenever a vacancy will occur by reason of the expiration of such a judge's term of office, the Commission's list of nominees shall be submitted to the President not less than thirty days prior to the occurrence of such vacancy. In the event the President fails to nominate, for Senate confirmation, one of the persons on the list submitted to him under this section within sixty days after receiving such list, the Commission shall nominate, and with the advice and consent of the Senate, appoint one of those persons to fill the vacancy for which such list was originally submitted to the President.

(2) In the event any person recommended by the Commission to the President requests that his recommendation be withdrawn, dies, or in any other way becomes disqualified to serve as a judge of the District of Columbia courts, the Commission shall promptly recommend to the President one person to replace the person originally recommended.

(3) In no instance shall the Commission recommend any person, who in the event of timely nomination following a recommendation by the Commission, does not meet, upon such nomination, the qualifications specified in section 433. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 434, 87 Stat. 796.)

¹ So in original. Probably should be section "102".

REFERENCE IN TEXT

"This Act", referred to in subsec. (c) (2), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

See note under § 431 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 431, 433 of this Appendix.

* * * * *

PART D—DISTRICT BUDGET AND FINANCIAL MANAGEMENT

Act Dec. 24, 1973, Pub. L. 93-198, title IV, Part D, § 445, 87 Stat. 800.

§ 445. District of Columbia courts' budget.

The District of Columbia courts shall prepare and annually submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system. All such estimates shall be forwarded by the Mayor to the Council, for its action pursuant to sections 47-224 and 47-228(c), without revision but subject to his recommendations. Notwithstanding any other provision of this Act, the Council may comment or make recommendations concerning such annual estimates involving the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system submitted by such courts but shall have no authority under this Act to revise such estimates. The courts shall submit as part of their budgets both a multi-year plan and a multiyear capital improvements plan and shall submit a statement presenting qualitative and quantitative descriptions of court activities and the status of efforts to comply with reports of the District of Columbia Auditor and the Comptroller General of the United States. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 445, 87 Stat. 800.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

See note under § 431 of this Appendix.

CROSS REFERENCE

Prior law relating to annual budget for the District of Columbia court system, see § 11-1743.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2607.

* * * * *

TITLE VII—REFERENDUM; SUCCESSION IN GOVERNMENT; TEMPORARY PROVISIONS; MISCELLANEOUS; AMENDMENTS TO DISTRICT OF COLUMBIA ELECTION ACT; RULES OF CONSTRUCTION; AND EFFECTIVE DATES

PART B—SUCCESSION IN GOVERNMENT

Act Dec. 24, 1973, Pub. L. 93-198, title VII, Part B, § 718, 87 Stat. 820.

§ 718. Continuation of District of Columbia court system.

(a) The District of Columbia Court of Appeals, the Superior Court of the District of Columbia, and the District of Columbia Commission on Judicial Disabilities and Tenure shall continue as provided under the District of Columbia Court Reorganization Act of 1970 subject to the provisions of part C of title IV of this Act and section 1-147(a) (4).

(b) The term and qualifications of any judge of any District of Columbia court, and the term and qualifications of any member of the District of Columbia Commission on Judicial Disabilities and Tenure appointed prior to the effective date of title IV of this Act shall not be affected by the provisions of part C of title IV of this Act. No provision of this Act shall be construed to extend the term of any such judge or member of such Commission. Judges of the District of Columbia courts and members of the District of Columbia Commission on Judicial Disabilities and Tenure appointed after the effective date of title IV of this Act shall be appointed according to part C of such title IV.

(c) Nothing in this Act shall be construed to amend, repeal, or diminish the duties, rights, privileges, or benefits accruing under sections 1561 through 1571 of title 11 of the District of Columbia Code, and sections 703 and 904 of such title, dealing with the retirement and compensation of the judges of the District of Columbia courts. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 718, 87 Stat. 820.)

REFERENCES IN TEXT

Provisions of the District of Columbia Court Reorganization Act of 1970 providing for the courts and commission, referred to in subsec. (a), appear in §§ 11-701 et seq., 11-901 et seq., and 11-1521 et seq.

"Part C of title IV of this Act", referred to in subsecs. (a) and (b), is set out at the beginning of this Appendix.

"The effective date of title IV of this Act", referred to in subsec. (b), refers to the effective date of title IV of Act Dec. 24, 1973. The effective date of such title IV is Jan. 2, 1975, see section 771(c) of such Act which is set out as a note under § 1-121.

"This Act", referred to in subsecs. (b) and (c), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

See note under § 431 of this Appendix.

TITLE 12.—RIGHT TO REMEDY

Title 12 was enacted by Pub. L. 88-241, Dec. 23, 1963, 77 Stat. 509

Chapter 3.—LIMITATION OF ACTIONS

§ 12-301. Limitation of time for bringing actions

CROSS REFERENCE

Contract for sale, commencement of action within 4 years after breach, see § 28:2-725.

NOTES TO DECISIONS

Accrual of cause of action—Contracts

Where lender's transferee purchased note and deed of trust in 1961, all installments due were paid until 1966 when borrower's grantee filed petition for reorganization, transferee filed a proof of claim later that year, trustee in bankruptcy objected to the claim in 1968 on ground that the loan was made in violation of Loan Shark Law [§ 26-601 et seq.], and loan and accompanying deed were declared void in 1971, action instituted by transferee in December, 1972 to recover its loss from lender was not barred by this section which provides three-year limitation period for actions based on contract, despite argument that transferee's claim accrued when it purchased the note and deed. *Hartford Life Insurance Co. v. Title Guarantee Co. et al.* (1975, 520 F.2d 1170, 172 U.S. App. D.C. 156).

In light of 1971 Court of Appeals decision invalidating loan as being in violation of Loan Shark Law, lender's transferee, which had purchased note and deed of trust, would have been better advised to proceed immediately against lender in 1968 when trustee in bankruptcy for borrower's grantee objected to transferee's proof of claim on ground that loan violated Loan Shark Law, rather than engaging in a protracted and ultimately futile legal battle with the trustee, but it would be grossly inequitable to determine that transferee's cause of action against lender accrued in 1968 prior to the Court of Appeals' decision. *Id.*

— Fraud

Lender's transferee's proposed second amended complaint of June, 1973 alleging that until 1973 lender fraudulently concealed from transferee the fact that lender was concerned, before loan was entered into in 1960, that such a loan might violate Loan Shark Law [§ 26-601 et seq.] was not barred by statute of limitations, where there was no indication that transferee should have learned of lender's alleged conduct any earlier than it did. *Hartford Life Insurance Co. v. Title Guarantee Co. et al.* (1975, 520 F.2d 1170, 172 U.S. App. D.C. 156).

— Installment obligations

Where notes provided that they were to be repaid in "constant monthly installments" and holder was granted option of accelerating the entire unpaid principal sum of the note upon default in payment of any one installment, the notes are "installment obligations" and statute limitations with respect to suit for nonpayment began to run on each installment as that installment fell due, and provision that unpaid balance of principal, if any, with accrued interest would be due and payable seven years after date of note does not cause the note to fall due at the end of seven years. *R. J. Toomey et ano. v. D. S. Cammack* (D.C. App. 1975, 345 A.2d 453).

— Insurance

Where beneficiary of group life policy who sought to recover double indemnity benefits for accidental death of insured had submitted her claim to insured's employer and subsequently received payment of ordinary life benefits through employer, beneficiary had made employer her agent for claim and for payment or rejection purposes; thus, notification of rejection of claim for double indem-

nity benefits to insured's former employer was sufficient to commence running of limitations period against beneficiary's claim for double indemnity benefits. *M. G. Dillard v. The Travelers Insurance Company* (D.C. App. 1972, 298 A.2d 222).

— Sealed instruments

Where note upon which suit was brought was under seal, the period of limitation was 12 years, not the three-year statute on simple contracts. *R. L. Ramey v. J. J. Burrascano* (D.C. App. 1974, 324 A.2d 687).

Amendment of pleadings

Amendment of complaint, which contained count for common-law slander charging that store detectives accused plaintiff's decedent of being either a drunkard or drug addict or both, so as to include statement that plaintiff additionally relied on Virginia statutory relief for slander, did not, for purposes of statute of limitations, commence a new cause of action. *May Department Stores Company, Inc., v. E. V. Devercelli* (D.C. App. 1973, 314 A.2d 767).

Breach of contract

Generally, statute of limitations begins to run from date a contract is breached. *M. G. Dillard v. The Travelers Insurance Company* (D.C. App. 1972, 298 A.2d 222).

Civil rights actions

Court is required as matter of judicial implication to create procedural limitations on actions under civil rights statutes for which Congress has enacted no applicable limitation and procedural limitations thus imposed should be consistent with the humane and remedial policy underlying civil rights statute. *S. Macklin et al. v. Spector Freight Systems, Inc., et al.* (1973, 478 F.2d 979, 156 U.S. App. D.C. 69).

To extent that minority truck driver could show that his misperception of his difficulties was justified and that he had good cause not to suspect racial discrimination, he could recover for period before he realized that he had actually been wronged and statute of limitations had begun to run. *Id.*

Conflict of laws

The choice-of-laws rule in the District of Columbia shall apply to conflicting statutes of limitations where it is demonstrated that a jurisdiction outside the forum has a relationship to the controversy that warrants an evaluation of the interest of such jurisdiction in the application of its own rule of law. *N. B. Cornwell et ux. v. C. I. T. Corp. of New York et ano.* (1974, 373 F. Supp. 661).

Questions whether two-year period of limitations of Virginia and Alaska or three-year period of limitations of District of Columbia were applicable to action by Virginia plaintiffs against District of Columbia defendant for injuries sustained in Alaska plane crash or whether Warsaw Convention preempted use of limitations of either jurisdiction in action operated to preclude granting of motion to dismiss action as untimely pending further argument. *Id.*

Where Virginia resident brought suit in the District of Columbia against corporation which engaged in business both in Virginia and the District of Columbia, based on personal injuries allegedly sustained in a fall in defendant's store in Virginia, Virginia two-year statute of limitations, which would bar the action, would be applied, rather than District of Columbia three-year statute, which would not bar the action, both on the basis of the District of Columbia "interest analysis" approach to conflict of laws and to prevent forum shopping. *D. Farrier v. May Department Stores Company, Inc.* (1973, 357 F. Supp. 190).

Contracts

General three-year statute of limitations for bringing action on a contract did not bar hospital's claim for services rendered to decedent. *D. Evans, Executor etc. v. Washington Hospital Center, Inc.* (D.C. App. 1972, 298 A. 2d 44).

Costs on appeal

Where appeal by plaintiff purchaser of automobile, in action for breach of contract against automobile dealer and manufacturer, in which action judgment had been entered for defendants on grounds that action was commenced more than six years after purchase of the automobile and thus was barred by the statute of limitations, was completely lacking in substance, appeal would be dismissed as frivolous and double costs would be assessed against purchaser. *E. E. Tolson, Jr., v. Handley Ford, Inc. et ano.* (D.C. App. 1973, 304 A. 2d 634).

Employment cases

Former government employee could not maintain action against government officials for alleged conspiracy to deprive him of his job more than three years after employee's dismissal on ground that conspiracy which caused dismissal, though admittedly occurring outside three-year period set by statute of limitations, continued within the period where no independently actionable acts causing injury were alleged to have occurred within the limitations period. *A. E. Fitzgerald v. R. C. Seamans, Jr., et al.* (1974, 384 F. Supp. 688).

Mere allegation that conspiracy to deprive former government employee of his job continued as conspiracy of silence after employee's dismissal, which admittedly occurred outside period set by statute of limitations, or that conspiracy was actively concealed within the limitations period would not suffice to make actionable those acts with respect to which statute of limitations had run. *Id.*

District of Columbia school teacher's cause of action arising out of disputed salary placement arose, at the latest, on May 1, 1967, on affirmance by chief examiner of her salary placement, and thus suit on original claim which was not filed until September 11, 1972, was barred by three-year statute of limitations. *C. L. Clark v. H. J. Scott, Superintendent of Schools, et al.* (D.C. App. 1974, 329 A. 2d 442).

Group life insurance

Action which was brought by beneficiary of group life policy to recover double indemnity accidental death benefits more than three years after insurer had refused claim for double indemnity benefits was precluded by applicable three-year statute of limitations. *M. G. Dillard v. The Travelers Insurance Company* (D.C. App. 1972, 298 A. 2d 222).

Personal injury

Time for bringing action for recovery of injuries sustained by hotel tenant who alleged that, on two occasions, a person entered his room and assaulted him, would be three years from the time the right to maintain the action accrued. *C. H. Alley v. Dodge Hotel* (1974, 501 F. 2d 880, 163 U.S. App. D.C. 320).

Where shooting victim filed his complaint against District of Columbia and its chief of police two years and three months after incident in which police officer shot victim with his service revolver while allegedly in grossly intoxicated condition, where subject case involved claims grounded in negligence, and where limitation period for negligence actions in the District of Columbia was three years, plaintiff's complaint was timely, notwithstanding contention that the complaint was essentially for "wounding" and thus barred under one-year limitation period for wounding. *D. S. Marusa v. District of Columbia et al.* (1973, 484 F. 2d 828, 157 U.S. App. D.C. 348).

Purpose

Broad purposes of statutes of limitation are prevention of state claims and unfair surprise. *S. Macklin et al. v. Specter Freight Systems, Inc., et al.* (1973, 478 F.2d 979, 156 U.S. App. D.C. 69).

Summary judgment

In beneficiary's action against insurer to recover double indemnity accidental death benefits under group life policy, beneficiary's allegations that suit was timely brought,

that claim was in continuing dispute, and that insurer's rejection of claim was a nullity failed to establish existence of genuine issues of material fact with respect to insurer's defenses under statute of limitations and did not preclude grant of summary judgment, absent supporting factual assertions. *M. G. Dillard v. The Travelers Insurance Company* (D.C. App. 1972, 298 A. 2d 222).

Tolling of statute

Statute of limitations was not tolled with respect to former government employee's claim of alleged conspiracy to deprive him of his job on theory that fraudulent concealment of material facts by conspirators precluded him from bringing lawsuit within statutory period where employee not only knew the essential facts relating to his cause of action well before statute of limitations had run on his claim but publicly alleged many of the same evidentiary details which he asserted in suit prior to running of the statute of limitations. *A. E. Fitzgerald v. R. C. Seamans, Jr., et al.* (1974, 384 F. Supp. 688).

Statute of limitations was not tolled on theory that members of conspiracy had fraudulently concealed certain crucial facts from him and that he was not able to discern concerted pattern of harassment by government officials acting outside the scope of their authority until Civil Service Commission hearings where, in letter to Civil Service Commission appealing his dismissal, former employee clearly maintained that acts of harassment he had suffered had been unauthorized and completely outside ambit of any legitimate official function. *Id.*

Former employee's filing of appeal to Civil Service Commission from his dismissal did not toll statute of limitations with respect to action for alleged conspiracy to deprive him of his job. *Id.*

To come within "continuing tort" exception to statute of limitations, another wrongful injurious act which occurs within statutory period and which is repetitious of prelimitation period acts is required; passive refusal to remedy wrongful prelimitation period acts is not sufficient to toll statute of limitations. *Id.*

The docketing of a duly authenticated claim against a decedent's estate in office of Register of Wills tolls the general three-year statute of limitations and brings the claim within special statute of limitations protecting claimant until three months after claim is rejected or disputed by the executor or administrator. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

United States, suit by

Inasmuch as any recovery in suit by AID to recover payments to exporters of medicinal drugs for breach of sales contract with Vietnamese importers would inure to the benefit of AID or the United States Treasury, the United States is the real party in interest and the federal six-year period of limitations is applicable rather than three-year period of limitations provided for contract actions by this section. *United States v. Emons Industries, Inc., et ano.* (1976, 406 F. Supp. 355).

§ 12-308. Actions by the United States**NOTES TO DECISIONS****Real party in interest**

Inasmuch as any recovery in suit by AID to recover payments to exporters of medicinal drugs for breach of sales contract with Vietnamese importers would inure to the benefit of AID or the United States Treasury, the United States is the real party in interest and the federal six-year period of limitations is applicable rather than three-year period of limitations provided for contract actions by section 12-301. *United States v. Emons Industries, Inc., et ano.* (1976, 406 F. Supp. 355).

§ 12-309. Actions against District of Columbia for unliquidated damages; time for notice**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Constitutionality

Differences existing between governmental and private tort-feasors justifies disparate treatment accorded private tort-feasors and those injured by governmental tort-feasors by this section which requires six months' notice of question as condition to maintenance of suit against District of Columbia for unliquidated damages to personal property. *R. A. Wilson et al. v. District of Columbia et al.* (D.C. App. 1975, 338 A.2d 437).

Estoppel

District of Columbia was not estopped from asserting that motorist's claim against it for personal injury sustained in automobile collision involving automobile owned by the District and operated by one of its employees was barred due to motorist's failure to give timely notice of claim absent waiver by the District of the notice requirement. *D. B. Miller v. I. Spencer et ano.* (D.C. App. 1974, 330 A. 2d 250).

Police report as notice

Police report which pertained to collision involving automobile owned by District of Columbia and operated by one of its employees and which indicated that no personal injuries resulted from the accident failed to satisfy requirements of "notice of claim" statute with respect to motorist's claim against the District for personal injuries allegedly sustained in the accident. *D. B. Miller v. I. Spencer et ano.* (D.C. App. 1974, 330 A. 2d 250).

For police accident report to satisfy statutory notice of claim requirement for maintenance of action against the District of Columbia, report must contain information as to time, place, cause and circumstances of injury or damage with at least the same degree of specificity required of a written notice filed by claimant; report must do more than merely report happening of an event or accident. *Id.*

While police accident report may suffice as notice of claim against District of Columbia in lieu of written notice by claimant, his agent or attorney, the police report must, when facts are apparent, contain at least substance of same information required of written notice filed by claimant and when it does not because no injuries were apparent at time of accident, it is duty of claimant to supply additional information when injuries become apparent. *Id.*

Police report, which set forth the circumstances surrounding plaintiff's arrest for unlawful entry and carrying a dangerous weapon, was not notice of an injury to person or damage to property for purposes of Code provision [§ 12-309] prohibiting maintenance of an action against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage, claimant has given written notice

to the District of Columbia Commissioner of the approximate time, place, cause, and circumstances of the injury or damage. *H. E. Brown v. District of Columbia* (D.C. App. 1973, 304 A. 2d 292).

Summary judgment

Trial court properly treated government's motion to dismiss damage action for noncompliance with provision of this section that written notice of claim against District of Columbia be given within six months of claimant's injury as, in effect, a motion for summary judgment, where court considered evidence presented at hearing at which claimant submitted records and testimony in attempt to raise genuine factual issue as to his inability to provide notice within statutory period. *J. H. Hill v. District of Columbia* (D.C. App. 1975, 345 A.2d 867).

U.S. Court of Appeals decisions

Decision of United States Court of Appeals with respect to statute pertaining to notice of a claim against District of Columbia, constituted law of the case since it had jurisdiction to review decision of District of Columbia Court of Appeals when decision of District of Columbia Court of Appeals was rendered and when petition for allowance of appeal was filed, but where decision was rendered after effective date of statute providing that decisions of District of Columbia Court of Appeals would no longer be subject to review by United States Court of Appeals, decision would constitute no binding precedent on future cases in District of Columbia Court of Appeals. *District of Columbia v. R. Smith* (D.C. App. 1972, 297 A. 2d 787).

Written notice

Where claimant in damage action against District of Columbia was ambulatory when discharged from hospital following five months' treatment for burns he had suffered when fire started in his bed at District of Columbia General Hospital, claimant's allegation that he "was feeling pretty bad" and "didn't know what to do" after discharge does not raise genuine issue as to whether wrongful act of hospital made claimant incapable of providing notice of claim against District of Columbia within month remaining of six-month notice period. *J. H. Hill v. District of Columbia* (D.C. App. 1975, 345 A.2d 867).

Evidence, in action against District of Columbia to recover for damage allegedly sustained as result of the alleged negligent maintenance and design of sewer grating, supported trial court's finding that District did not receive notice from plaintiff giving correct location of accident as required by statute governing actions against District for damage to person or property. *E. F. Toomey v. District of Columbia* (D.C. App. 1974, 315 A.2d 565).

Evidence of nonreceipt of letter by addressee was sufficient to rebut prima facie case of receipt created by proof that letter was mailed and to create true issue of fact to be resolved by trier of facts. *Id.*

TITLE 13.—PROCEDURE GENERALLY

Title 13 was enacted by Pub. L. 88-241, Dec. 23, 1963, 77 Stat. 511

Chapter 3.—PROCESS AND PARTIES

SUBCHAPTER II.—SERVICE OF PROCESS; LEGAL REPRESENTATIVES

§ 13-336. Service by publication on nonresidents, absent defendants, and unknown heirs or devisees

NOTES TO DECISIONS

Publication requirements

Trial court's selecting for publication of process in divorce proceedings a newspaper other than newspaper preferred by wife's counsel does not work a denial of access to the courts, where wife, who asserted that publication in newspaper selected by court was more costly than publication in newspaper preferred by counsel, had been permitted to proceed in forma pauperis. *D. E. Gomez v. M. F. Gomez* (D.C. App. 1975, 341 A.2d 423).

Relative publication costs are not items of which court can take judicial notice for purpose of determining whether trial court abused its discretion in ordering service by publication in a newspaper other than newspaper chosen by plaintiff's counsel; even if they were, judicial notice can not be used as device to correct on appeal the almost complete failure to present adequate evidence of publication costs to the trial court. *Id.*

Record on appeal from trial court's ruling in selecting for publication of process in divorce proceeding a newspaper other than newspaper preferred by plaintiff wife is inadequate and remand is required where no facts as to publication costs were presented to the trial court and motion for publication contained merely naked assertions that plaintiff could not afford to publish in two newspapers and that newspaper preferred by her counsel was the least expensive newspaper. *Id.*

§ 13-340. Manner of publication; mailing of copy; default; appointment and compensation of guardian and attorney

NOTES TO DECISIONS

Publication requirements

Trial court's selecting for publication of process in divorce proceedings a newspaper other than newspaper preferred by wife's counsel does not work a denial of access to the courts, where wife, who asserted that publication in newspaper selected by court was more costly than publication in newspaper preferred by counsel, had been permitted to proceed in forma pauperis. *D. E. Gomez v. M. F. Gomez* (D.C. App. 1975, 341 A.2d 423).

Record on appeal from trial court's ruling in selecting for publication of process in divorce proceeding a newspaper other than newspaper preferred by plaintiff wife is inadequate and remand is required where no facts as to publication costs were presented to the trial court and motion for publication contained merely naked assertions that plaintiff could not afford to publish in two newspapers and that newspaper preferred by her counsel was the least expensive newspaper. *Id.*

Relative publication costs are not items of which court can take judicial notice for purpose of determining whether trial court abused its discretion in ordering service by publication in a newspaper other than newspaper chosen by plaintiff's counsel; even if they were, judicial notice can not be used as device to correct on appeal the almost complete failure to present adequate evidence of publication costs to the trial court. *Id.*

Denial of motion to allow publication only in least expensive newspaper in divorce action by wife proceeding in forma pauperis, who made bona fide effort to comply

with publication requirements, and who alleged that without such relief she would be unable to pursue divorce action, was improper in that indigent litigant's access to court to obtain divorce may not be barred by financial considerations, including publication costs. *M. B. Johnson v. J. R. Johnson* (D.C. App. 1974, 329 A.2d 451).

Chapter 4.—CIVIL JURISDICTION AND SERVICE OUTSIDE THE DISTRICT OF COLUMBIA

SUBCHAPTER I.—GENERAL PROVISIONS

§ 13-401. Relation to other provisions of law

NOTES TO DECISIONS

Construction

Long-arm statute (this chapter) enacted as part of Court Reorganization Act of 1970 exists independently of Motor Vehicle Safety Responsibility Act (§ 40-423) as an alternative, independent method for acquiring in personam jurisdiction over a nonresident motorist. *Liberty Mutual Insurance Company et ano. v. W. Burgess* (D.C. App. 1973, 308 A.2d 775).

SUBCHAPTER II.—BASES OF PERSONAL JURISDICTION OVER PERSONS OUTSIDE THE DISTRICT OF COLUMBIA

§ 13-422. Personal jurisdiction based upon enduring relationship

NOTES TO DECISIONS

Business domicile

Corporation does not maintain business domicile within District of Columbia merely by maintaining office and staff within District for purposes of maintaining contact with agencies of United States government. *Norair Engineering Associates, Inc., et ano. v. Noland Company et al.* (1973, 365 F. Supp. 740).

§ 13-423. Personal jurisdiction based upon conduct

NOTES TO DECISIONS

Constitutionality

Exercise of long-arm jurisdiction over foreign corporations in District corporation's action for compensation for services in dealing with federal agency does not deny due process since defendant corporations, through their contract with District corporation, caused District corporation to carry on business activities on their behalf within District, where office was located, and since District has interest in providing forum for its residents. *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc., et ano.* (D.C. App. 1975, 339 A.2d 390).

Construction

Congress intended to provide District of Columbia with long-arm statute similar to those of Maryland and Virginia and in interpreting statute court must look for guidance to background of Uniform Act and Maryland and Virginia statutes as interpreted by their courts. *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc., et ano.* (D.C. App. 1975, 339 A.2d 390).

Long-arm statute does not require that the contacts required for jurisdiction such as regular solicitation of business or specific course of contact have direct relationship to the act or failure to act which caused plaintiff's injury. *M. L. Aiken v. Lustine Chevrolet, Inc., et ano.* (1975, 392 F.Supp. 883).

Long-arm statute (this chapter) enacted as part of Court Reorganization Act of 1970 exists independently of Motor Vehicle Safety Responsibility Act (§ 40-423) as an alternative, independent method for acquiring in personam jurisdiction over a nonresident motorist. *Liberty Mutual Insurance Company et ano. v. W. Burgess* (D.C. App. 1973, 308 A.2d 775).

Doing business

Complaint which alleged that a phone conversation acted as a ratification of an agent's contract made between two parties physically present in the District of Columbia was sufficient, within meaning of long-arm statute's "transacting business" test, to invoke long-arm jurisdiction of the court. *Dorothy K. Winston & Co. et al. v. Town Heights Development, Inc.* (1974, 376 F.Supp. 1214).

Although corporate defendant, as operator of aircraft which crashed and allegedly caused injury to plaintiffs, listed an address and telephone number in the District of Columbia telephone directory as well as the World Aviation Directory, where both publications showed the address to be in Arlington, Virginia, and, in addition, defendant was a Tennessee corporation which did not employ personnel or operate aircraft into or out of District of Columbia, and had not entered into any contracts, nor had any outstanding obligations to perform within District of Columbia, defendant was not "transacting any business" within District of Columbia so as to be amenable to long-arm jurisdiction. *N. B. Cornwell et ux. v. C. I. T. Corp. of New York et ano.* (1974, 373 F. Supp. 661).

Fact that foreign corporation did not qualify to do business within District of Columbia did not entitle creditor of corporation to maintain suit against individual officers of corporation. *A. Tasker, Inc. v. J. P. Amsellem* (D.C. App. 1974, 315 A.2d 178).

Defendant Oregon corporation had not "transacted any business" in the District of Columbia, within meaning of venue statute, where corporation sold an automobile to Michigan corporation and thereafter exercised no control over nor had any knowledge of the price at which the automobile would finally be sold to plaintiff customer, where corporation was not solicited by plaintiff, was not paid by him, and where corporation had maintained no office nor agent in the District of Columbia. *E. Mosley v. Nationwide Purchasing, Inc. et ano.* (1973, 485 F.2d 418).

Defendant Michigan corporation was not "doing business" within the District of Columbia, within meaning of venue statute, so that venue was laid in wrong district and transfer of case in the interests of justice was within trial court's discretion, where, inter alia, corporation had no office in the District, no agent, no telephone listing and no bank accounts, and where purchase order relating to sale of automobile constituted an offer by plaintiff customer to corporation which was not binding upon the parties until corporation accepted the terms and conditions of sale, so that it could not be said that the contract for sale of automobile was made in the District. *Id.*

Mere fact that sale of stainless steel tubing used in construction project in West Virginia may have been consummated in District of Columbia by distributor who was not acting as agent for manufacturers of tubing did not give jurisdiction under "long-arm" statute to federal court in District over action by buyers of tubing against manufacturers for damages for alleged defects in tubing. *Norair Engineering Associates, Inc., et ano. v. Noland Company et al.* (1973, 365 F. Supp. 740).

Government contacts

New York corporation, involved in construction and operation of mills in foreign countries, is not within District of Columbia jurisdiction through government contacts which did not involve sales to the Government but merely taking advantage of services offered to prospective foreign investors by federal agencies, for purpose of action by plaintiffs in whose favor corporation negotiated federal loan. *Siam Kraft Paper Co., Ltd. v. Parsons & Whittemore, Inc., et al.* (1975, 400 F.Supp. 810).

Rule that entrance into District of Columbia to deal with federal agency does not constitute transaction of business within this chapter does not apply to preclude jurisdiction over corporations which contracted with District corporation to deal with federal agency, with respect to District corporation's claim for compensation for these services. *Environmental Research International, Inc. v.*

Lockwood Greene Engineers, Inc., et ano. (D.C. App. 1975, 339 A.2d 390).

Intent

Congress' overall intent with respect to District of Columbia long-arm statute was to provide the District's courts, to the greatest extent possible, with essentially identical long-arm jurisdiction as was then available in Maryland and Virginia. *M. Margoles v. A. Johns et al.* (1973, 483 F.2d 1212, 157 U.S. App. D.C. 209; aff'g 333 F. Supp. 942).

Minimum contacts

Discussions, conferences and meetings conducted within District of Columbia by nonresident corporation with reference to oral contract which was allegedly breached by defendants constitutes such minimal contacts with District that maintenance of action for breach of such contract does not offend traditional notions of fair play and substantial justice. *Unidex Systems Corporation v. Butz Engineering Corporation et ano.* (1976, 406 F.Supp. 899).

Personal jurisdiction pursuant to long-arm statute was not proper over automobile salesman, sued in his individual capacity on basis of fraudulent representations in sale of automobile to resident of the District, in absence of showing that defendant had any contacts whatsoever with District. *M. L. Aiken v. Lustine Chevrolet, Inc., et ano.* (1975, 392 F.Supp. 883).

Tortious injury

Personal jurisdiction over defendant under long-arm statute was proper where action was based on alleged injuries to resident plaintiff's credit rating and to her mental and emotional well-being notwithstanding non-resident defendant's contention that personal jurisdiction was improper because the tort occurred in Maryland. *M. L. Aiken v. Lustine Chevrolet, Inc., et ano.* (1975, 392 F. Supp. 883).

Where newspaper reporter allegedly made defamatory statements in telephone calls from Wisconsin to the District of Columbia with respect to plaintiff, reporter had not acted within the District within meaning of its long-arm statute on theory that by making the telephone call and by causing actual physical events in the District such as the ringing of bells and flashing of lights the reporter projected her presence into the District, and no personal jurisdiction could be asserted over reporter. *M. Margoles v. A. Johns et al.* (1973, 483 F.2d 1212, 157 U.S. App. D.C. 209; aff'g 333 F. Supp. 942).

Mere fact that purchasers of stainless steel tubing used in West Virginia construction project may have been required to borrow funds from lenders in District of Columbia in order to replace allegedly defective tubing did not mean that purchasers had sustained "tortious injury" within District of Columbia so as to give federal court in District jurisdiction over suit by purchasers against manufacturers under "long-arm" statute. *Norair Engineering Associates, Inc., et ano. v. Noland Company et al.* (1973, 365 F. Supp. 740).

Where complaint alleged a conspiracy and overt acts in furtherance of conspiracy, at least one of which overt acts was an alleged tort in District of Columbia, where such overt acts were uncontroverted and where, under plaintiff's theory, coconspirators were agents of all their fellow conspirators when acting in furtherance of conspiracy, jurisdiction could be obtained over alleged conspirators, who had no direct contacts with District, by virtue of service of process under District's "long-arm" statute. *J. Mandelkorn v. T. Patrick et al.* (1973, 359 F. Supp. 692).

Under provision that District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from that person's transacting any business in District or causing tortious injury in District by an act or omission in the District, both the act and the effect, or injury, must take place in District. *Id.*

§ 13-425. Inconvenient forum

NOTES TO DECISIONS

Abuse of discretion

The Superior Court did not abuse its discretion in granting defendant's motion to dismiss on grounds of forum non conveniens where plaintiff's cause of action for

alleged false arrest and wrongful detention arose in Maryland and defendant was plainly subject of service of process in Maryland. *E. J. Pitts v. Woodward and Lothrop* (D.C. App. 1974, 327 A. 2d 816; cert. denied 95 S. Ct. 832, 420 U.S. 911).

Discretion of court

A decision to dismiss on a forum non conveniens motion is entrusted to discretion of trial court and such a dismissal will not be reversed on appeal except for a clear abuse of discretion. *District-Realty Title Insurance Corporation v. D. M. Goodrich et al.* (D.C. App. 1974, 328 A. 2d 92).

Jurisdiction over defendant

When an issue of forum non conveniens or change of venue is timely raised in a civil action, it is not sufficient to defeat such a motion to show that the court in which the action has been filed clearly has jurisdiction over defendant. *E. J. Pitts v. Woodward and Lothrop* (D.C. App. 1974, 327 A. 2d 816; cert. denied 95 S. Ct. 832, 420 U.S. 911).

Proper forum

Where resident plaintiff alleged that automobile dealer's refusal to accept return of vehicle pursuant to representations made by salesman caused injury to plaintiff's credit rating and mental and physical well-being, District of Columbia was not a forum non conveniens to defendant automobile dealer which conducted sales activity within district and was located in nearby suburb. *M. L. Aiken v. Lustine Chevrolet, Inc., et ano.* (1975, 392 F. Supp. 883).

Where Switzerland, alleged appropriate forum, had no contacts with subject of action to enforce support agreement executed between parties in California, other than defendant's domicile there, defendant was not amenable to service of process in California, defendant had substantial contacts with Washington, D.C. and it could reasonably be assumed that suit in Switzerland would face variety of obstacles not found in United States court, inconvenience of defendant does not outweigh plaintiff's interest in having her claim, governed by American law, considered and determined by American court and defendant is not entitled to have action brought in the District dismissed on ground of forum non conveniens. *K. Dorati v. A. Dorati* (D.C. App. 1975, 342 A.2d 18).

Maryland, not the District of Columbia, was proper forum for class action by Maryland homeowners against title insurance company which did business in Maryland seeking damages for overcharges paid to Maryland lawyers on ground that such charges were not filed with nor approved by Maryland Insurance Commissioner, in light of fact that judgment in the Court of District of Columbia where title insurance company had its principal place of business and where some overcharges were made would not be a final resolution of issue raised in action and would not be binding upon Maryland courts or Maryland Insurance Commissioner. *District-Realty Title Insurance Corporation v. D. M. Goodrich et al.* (D.C. App. 1974, 328 A. 2d 92).

SUBCHAPTER III.—SERVICE OUTSIDE THE DISTRICT OF COLUMBIA

§ 13-431. Manner and proof of service

NOTES TO DECISIONS

Service on foreign government

In action brought by a District of Columbia resident against government of Brazil for damage to his home allegedly resulting from construction of Brazilian embassy, service of summons and complaint upon government of Brazil by registered mail delivered to Ministry of External Relations in Brazilia and by registered mail delivered to the Brazilian embassy in the District of Colum-

bia were reasonably calculated to provide adequate notice of action and both methods of service were valid. *S. S. Renchard et al. v. Humphreys & Harding, Inc., et al.* (1973, 59 F.R.D. 530).

Chapter 5.—COUNTERCLAIMS

§ 13-501. Counterclaim by way of set-off as an action by defendant

NOTES TO DECISIONS

Unauthorized practice of law

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

Attorney was entitled to raise by counterclaim to a complaint on a debt the defense that the plaintiff, a collection agency, was engaged in the unauthorized practice of law. *J. H. Marshall & Associates, Inc. v. W. A. Burleson* (D.C. App. 1973, 313 A. 2d 587).

§ 13-502. Effect of assignment

NOTES TO DECISIONS

Unauthorized practice of law

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

Attorney was entitled to raise by counterclaim to a complaint on a debt the defense that the plaintiff, a collection agency, was engaged in the unauthorized practice of law. *J. H. Marshall & Associates, Inc. v. W. A. Burleson* (D.C. App. 1973, 313 A. 2d 587).

Collection agency cannot properly interpose itself between a creditor and an attorney seeking to collect the creditor's claim; to do so either directly or indirectly, by assignment or otherwise, constitutes the unauthorized practice of law. *Id.*

Chapter 7.—TRIAL

§ 13-702. Repealed. July 29, 1970, Pub. L. 91-358, § 142 (5)(A), title I, 84 Stat. 552.

NOTES TO DECISIONS UNDER PRIOR LAW

Construction

In view of restructuring of District of Columbia court system accomplished by District of Columbia Court Reform and Criminal Procedure Act of 1970, same deference is owed courts of District with respect to their interpretation of acts of Congress directed toward local jurisdiction as is owed with regard to positions taken by same courts on common-law questions of evidence and substantive criminal law. *D. Pernell v. Southall Realty* (1974, 94 S. Ct. 1723, 416 U.S. 363; rev'g 294 A.2d 490).

Right to jury trial

Since right to recover possession of real property was right ascertained and protected at common law, any party involved in suit under statutes of District of Columbia establishing summary procedure for recovery of possession of real property is entitled under Seventh Amendment to Constitution to trial by jury. *D. Pernell v. Southall Realty* (1974, 94 S. Ct. 1723, 416 U.S. rev'g and rem'g 294 A.2d 490).

TITLE 14.—PROOF

Title 14 was enacted by Pub. L. 88-241, Dec. 23, 1963, 77 Stat. 517

Chapter 1.—EVIDENCE GENERALLY; DEPOSITIONS

§ 14-102. Impeachment of own witness; surprise

NOTES TO DECISIONS

Impeachment

In prosecution for sodomy, taking indecent liberties with a minor and assault with a deadly weapon, questioning of complainant as to, *inter alia*, "Why is it that the first time you said the man tried to do it and later you said that he did do it" did not constitute "impeachment," for purposes of statute permitting party to impeach its own witness only if party is taken by surprise by witness' testimony, but rather a permissible effort to obtain an explanation for established inconsistent statements. *J. G. Davis v. United States* (D.C. App. 1974, 315 A.2d 157).

Inconsistent statements as evidence

A prior inconsistent statement used to impeach a witness is admissible solely to affect the credibility of the witness and is not to be considered as support for the truth of its contents, and such rule applies where a party's own witness is impeached because he has been determined to be hostile. *United States v. D. G. Gilliam* (1973, 484 F. 2d 1093, 157 U.S. App. D.C. 375).

Instructions

Under this section authorizing party to impeach his witness by prior statements if the party is taken by surprise by the testimony of the witness, trial court is required to give, *sua sponte*, a cautionary instruction as to the limited purpose for which the evidence of the prior statements can be used, and except in cases of explicit waiver by defense counsel, failure to do so constitutes reversible error. *United States v. D. G. Gilliam* (1973, 484 F. 2d 1093, 157 U.S. App. D.C. 375).

Assuming that prior statement by witness called by prosecutor as a hostile witness, to the effect that witness had been threatened by defendant, was properly admitted despite absence of surprise on the part of the prosecutor, the trial court committed error in failing to give an immediate cautionary instruction regarding the limited, impeachment purpose for which the evidence could be used and such error was not harmless where court also failed to give such an instruction in its charge to the jury and where the prosecutor argued that the matters in the statement revealed a consciousness of guilt on the part of defendant and should be taken as fact. *Id.*

Surprise

If the government were positive that one of its witnesses would repudiate a prior statement at trial, it could not be surprised when he did so, and Government was not entitled to claim benefit of statute which allows a party, when surprised by the testimony of his witness, to prove a prior inconsistent statement. *W. A. Baker v. United States* (D.C. App. 1974, 324 A.2d 194).

Chapter 3.—COMPETENCY OF WITNESSES

§ 14-305. Competency of witnesses; impeachment by evidence of conviction of crime

NOTES TO DECISIONS

Abuse of discretion

Trial court did not abuse its discretion in allowing government to impeach defendant's testimony with a prior conviction where case had narrowed to credibility of defendant and his accuser and, in such circumstances, there was greater, not less, compelling reason for explor-

ing all avenues which would shed light on which of two witnesses was to be believed. *United States v. D. T. McDonald* (1973, 481 F. 2d 513, 156 U.S. App. D.C. 338).

Administrative proceedings

In denying application for license as a business-chance broker, it was not error for the Real Estate Commission to rely in part on a conviction for fraudulent conduct occurring prior to the ten-year period specified by statute as limitation on the use of prior convictions of witnesses for impeachment purposes in court trials. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

Admissibility of prior conviction

Section authorizing conviction-impeachment in trials of District of Columbia offenses mandates that court allow such evidence, and trial court has no discretion in the matter where conviction falls within the purview of the section. *United States v. E. Edmonds, Jr.* (1975, 524 F. 2d 62, 173 U.S. App. D.C. 241).

Under section enabling impeachment of witness by proof that he has been convicted of criminal offenses under stated conditions, conviction suffered by defendant in North Carolina at age of 16 was not inadmissible merely because, had offense occurred in the District of Columbia, defendant would not have been subjected to criminal prosecution as an adult. *Id.*

Where application by trial court of this section providing for mandatory witness impeachment by conviction had been improper because indictment had charged both District of Columbia Code offense and United States Code offense, and witness-impeachment statute was not operable as to latter offense, defendant appellant was entitled to remand of case with directions for district court to review admissibility of prior conviction in light of discretion available to it, and such remand was available despite fact that defendant had been acquitted by jury on federal count. *United States v. M. J. Belt* (1975, 514 F. 2d 837, 169 U.S. App. D.C. 1).

Defendant's own testimony was not necessary to his defenses that he was home sleeping while offenses were committed and that he had purchased murder weapon from a third person at a time subsequent to murder and other crimes charged, thus supporting determination that two prior convictions were admissible because prejudicial impact did not far outweigh their probative value on issue of credibility. *United States v. J. E. Marshall* (1975, 511 F. 2d 1308, 167 U.S. App. D.C. 306).

Defendant's prior conviction of carrying a pistol without a license is within purview of this section which provides that conviction of a crime is admissible for impeachment purposes if crime involved dishonesty or false statement. *C. Williams v. United States* (D.C. App. 1975, 337 A. 2d 772).

In prosecution for assault and threats to do bodily harm, admission of defendant's prior conviction of manslaughter was not error, where at time prior conviction was introduced and during final instructions trial court informed jury that it should consider the conviction only in evaluating defendant's credibility. *W. B. Davis v. United States* (D.C. App. 1974, 313 A. 2d 886).

Fact that time for taking appeal from defense witness' conviction of Harrison Act violation had not expired did not preclude use of such conviction for impeachment on ground of lack of finality since such impeachment was permissible under new impeachment statute; and, in any event, since two of three defense witnesses were not impeached by prior convictions, admission of such conviction did not affect defendant's substantial rights. *United*

States v. J. D. Henson (1973, 486 F. 2d 1292, 159 U.S. App. D.C. 32).

Principal consideration under the discretionary standard of admissibility of prior convictions, as such standard existed prior to 1970 amendment of impeachment statute to mandate admission of certain prior convictions, was whether the prejudicial effect of impeachment far outweighed the probative relevance of a prior conviction to issue of credibility. *Id.*

Exclusion of evidence of conviction of complaining witness of making false report to police, which evidence was admissible under statute, was reversible error in prosecution for first-degree burglarly, armed robbery, and assault with a deadly weapon, where honesty and veracity of complaining witness was at issue and exclusion may have affected verdict. *United States v. G. O. Morgan* (1973, 476 F. 2d 928, 155 U.S. App. D.C. 172).

If evidence of prior conviction of defendant was admissible on any other ground than for purpose of attacking his credibility, admission of evidence was properly within the discretion of the trial judge regardless of the constitutionality of amended statute respecting the admission of evidence of prior crimes for purpose of attacking credibility of witness. *United States v. J. L. Tyson* (1972, 470 F. 2d 381, 152 U.S. App. D.C. 233; cert. denied 93 S. Ct. 1512, 410 U.S. 985).

Constitutionality

This section providing for mandatory admission of witness impeachment by conviction is not unconstitutional. *United States v. M. J. Belt* (1975, 514 F.2d 837, 169 U.S. App. D.C. 1).

This section providing that a prior conviction of a felony "shall be admitted" to impeach credibility of the witness is constitutional. *W. B. Davis v. United States* (D.C. App. 1974, 313 A. 2d 886).

To extent that the 1970 amendment of impeachment statute mandating admission into evidence of certain prior convictions if a defendant takes the stand is applied in trials for offenses committed before its effective date such application constitutes a prohibited ex post facto law; the particularized consideration under the prior discretionary standard of whether prejudicial effect of impeachment outweighed probative relevance of prior conviction on issue of credibility was a protection of the magnitude necessary to invoke the ex post facto clause. *United States v. J. D. Henson* (1973, 486 F. 2d 1292, 159 U.S. App. D.C. 32).

Where offenses at issue were committed before effective date of 1970 amendment to impeachment statute mandating admission into evidence of certain prior convictions of a defendant if he takes the stand, as well as admission of such offenses as to witnesses, such retroactive application was unconstitutional as a prohibited ex post facto law. *Id.*

Construction

District of Columbia Court Reform Act's requirement that evidence of certain types of prior crimes be admitted for impeachment purposes applies to trials of Code offenses conducted in United States district court during transition period established by Code. *United States v. R. E. Yates* (1975, 524 F.2d 1282, 173 U.S. App. D.C. 308).

Amendment to this section shifting language from "crime" to "criminal offense" was intended not to restrict but to broaden category of convictions usable under this section. *United States v. E. Edmonds, Jr.* (1975, 524 F.2d 62, 173 U.S. App. D.C. 241).

Where indictment as originally returned contained both federal and District of Columbia offenses, but federal offenses were dismissed prior to trial, District Court properly applied this section providing for mandatory admission of witness impeachment by conviction. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

This section providing for mandatory admission of witness impeachment by conviction applies to trial in United States District Court for District of Columbia of District of Columbia Code indictments returned before August 1, 1972. *United States v. M. J. Belt* (1975, 514 F.2d 837, 169 U.S. App. D.C. 1).

Where indictment is triable in United States District Court for District of Columbia because it includes both United States Code and District of Columbia Code of-

fenses, provision of this section for mandatory admission of witness impeachments by conviction is not operative; rather, witness impeachment will be conducted under federal evidentiary law, including Federal Rules of Evidence, when effective. *Id.*

Provision of this section that evidence of criminal defendant's prior convictions shall be admitted for impeachment purposes was intended to apply only to D.C. Code crimes and not to apply to U.S. Code crimes. *United States v. C. S. Hairston* (1974, 495 F. 2d 1046, 161 U.S. App. D.C. 466).

Where U.S. attorney uses authority given him to combine local and federal crimes in the same indictment, resulting in their trial together in United States District Court in the District of Columbia, federal forum's evidentiary law would govern impeachment by prior conviction. *Id.*

This section, which permits evidence of prior conviction to be admitted for purpose of attacking defendant's credibility when the defendant testified in his own behalf, does not permit use of the evidence as proof of guilt. *United States v. C. H. Carter* (1973, 482 F. 2d 738, 157 U.S. App. D.C. 149).

In permitting evidence of prior conviction to impeach a defendant when he testifies, this section furnishes no foundation for its use for any other purpose and care on part of court is required to confine such evidence to the permissible purpose. *Id.*

Conviction

Mere plea of guilty was insufficient to constitute "conviction" without statute authorizing attack upon credibility of witnesses by admission of prior "convictions." *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

Discovery

Criminal records of prosecution witnesses were neither evidence favorable to defendant nor material in any way on issue of guilt or punishment except to the extent that their use would be permitted for impeachment purposes and discovery of the criminal records in the possession of the prosecutor is not compelled by due process of law. *United States v. W. C. Engram et ano.* (D.C. App. 1975, 337 A.2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

The government is committed to furnish to the defendant at trial the record of all impeachable convictions of prosecution witnesses. *Id.*

Evidence of prior convictions

Under statute authorizing attack upon credibility of witnesses by admission of prior "convictions," it was error to admit evidence of defendant's plea of guilty in different prosecution but where testimony as to guilty plea was largely cumulative to testimony which defendant himself introduced, error was harmless. *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

Evidence of prior crimes or convictions is admissible for certain limited purposes for which the probative value of the evidence outweighs its prejudicial character. *United States v. C. H. Carter* (1973, 482 F. 2d 738, 157 U.S. App. D.C. 149).

Defense counsel has burden to shown why court should exercise discretion to render prior conviction unavailable for impeachment and court's failure to hold hearing on availability for prior conviction was not grounds for reversal, although counsel was court appointed. *United States v. D. F. Brown* (1973, 476 F. 2d 933, 155 U.S. App. D.C. 177).

Hearing

In this case the court held that under the circumstances the defendant, who was convicted of housebreaking and grand larceny, was entitled to nonjury hearing to determine whether defendant would be allowed to take stand in front of jury without prosecution introducing evidence of defendant's prior convictions. *United States v. J. Coleman* (1969, 420 F. 2d 1313, 137 U.S. App. D.C. 110).

Harmless error

In view of overwhelming case made out by prosecution against defendants in robbery prosecution, trial court's error in allowing impeachment of one defendant by evi-

dence of prior conviction for simple assault, such crime not being a felony and not involving dishonesty or false statement, was harmless. *United States v. M. J. Belt* (1975, 514 F.2d 837, 169 U.S. App. D.C. 1).

Refusal to rule on whether defendant's prior conviction of attempted house breaking was an impeachable one is improper, but error is harmless, in that since such conviction was admissible for impeachment purposes, defendant's decision whether to testify would have been same if trial judge had expressly ruled on its admissibility. *M. A. Hampton v. United States* (D.C. App. 1975, 340 A.2d 813).

Impeachment

No improper impeachment of defendant in second-degree murder prosecution took place when prosecutor inquired as to previous terms of imprisonment served by defendant only after prisoner had already testified to such confinements in his direct testimony. *C. R. Curry v. United States* (D.C. App. 1974, 322 A. 2d 268).

Instructions

Trial judge's failure to sua sponte give an immediate cautionary instruction when defendant's prior conviction was brought out was not prejudicial error and was not cognizable as plain error where immediately following impeachment defense counsel brought out on redirect that defendant had served his time, defense counsel made no mention of instructions to limit use of prior impeachment when trial court asked for any special instructions and, in contrast to the government, defense counsel again raised prior conviction in his closing argument to note that it was only to be used in considering credibility. *United States v. J. D. Henson* (1973, 486 F. 2d 1292, 159 U.S. App. D.C. 32).

Trial court's instructions concerning limited use of evidence of prior criminal convictions was not sufficient to cure prejudicial effect of the eliciting from defendant of testimony concerning prior convictions. *United States v. C. H. Carter* (1973, 482 F. 2d 738, 157 U.S. App. D.C. 149).

Reversible error

Prosecutor's eliciting of testimony from defendant that defendant had previously been convicted of six counts of robbery and assault with a dangerous weapon, which was designed to persuade jury that defendant would rob a man, and in fact committed the robbery for which he

was charged, constituted reversible error. *United States v. C. H. Carter* (1973, 482 F. 2d 738, 157 U.S. App. D.C. 149).

§ 14-306. Husband and wife

NOTES TO DECISIONS

Confidential nature

Privilege not to reveal confidential marital communications survives the death of one spouse, but it does not extend to noncommunicative acts and a communication otherwise privileged loses its privileged character on coming into the hands of a third party. *United States v. J. H. Burks* (1972, 470 F. 2d 432, 152 U.S. App. D.C. 284).

Termination of privilege

Common-law privilege of one spouse not to testify for or against the other would not apply where husband's legal interests were in no way at stake in case and the privilege ended with termination of marital relationship through death of husband. *United States v. J. H. Burks* (1972, 470 F. 2d 432, 152 U.S. App. D.C. 284).

Chapter 5.—DOCUMENTARY EVIDENCE

§ 14-505. Municipal ordinances and regulations

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—ABSENCE FOR SEVEN YEARS

§ 14-701. Presumption of death

NOTES TO DECISIONS

Evidence

In action wherein insured's mother-in-law, who was beneficiary under life policy, sought declaration that insured was legally dead on basis of statutory presumption, evidence warranted finding that insured departed with intention of changing his domicile. *M. A. Sulkie v. Metropolitan Life Insurance Company* (D.C. App. 1975, 336 A.2d 830).

TITLE 15.—JUDGMENTS AND EXECUTIONS; FEES AND COSTS

Title 15 was enacted by Pub. L. 88-241, Dec. 23, 1963, 77 Stat. 522

Chapter 1.—JUDGMENTS AND DECREES

§ 15-101. Enforceable period of judgments; expiration

NOTES TO DECISIONS

Judgment—Validity

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

§ 15-102. Lien of judgment, decree, or forfeited recognition

NOTES TO DECISIONS

Option to purchase

Purchase option accompanying lease is not a legal or equitable estate in land within provisions of this section that, as of date it is recorded, a final judgment constitutes a lien on all freehold and leasehold estates, legal and equitable of defendants bound by judgment in any land, tenements or hereditaments. *R. Harris et ano. v. J. S. Wagshal* (D.C. App. 1975, 343 A.2d 283).

§ 15-108. Interest on judgment for liquidated debt

NOTES TO DECISIONS

Liquidated debt

Where each member of plaintiff class acquired vested right to receive monthly pension payments at time his application was unlawfully denied, there was liquidated debt in sense that, whenever monthly payment was not made, it was an easily ascertainable sum certain, and question of entitlement of interest was thus controlled by this section providing for inclusion of interest where action is to recover liquidated debt on which interest is payable by contract, by law or by usage; and payment of interest should have been ordered; even if this section were not applicable, denial of interest could not be affirmed as exercise of equitable discretion. *S. Kiser et al. v. H. Huger et al.* (1974, 517 F.2d 1237, 170 U.S. App. D.C. 407).

§ 15-109. Interest on judgment for damages in contract or tort

NOTES TO DECISIONS

Equitable allowance

Where each member of plaintiff class acquired vested right to receive monthly pension payments at time his application was unlawfully denied, there was liquidated debt in sense that, whenever monthly payment was not made, it was an easily ascertainable sum certain, and question of entitlement of interest was thus controlled by statute providing for inclusion of interest where action is to recover liquidated debt on which interest is payable by contract, by law or by usage; and payment of interest should

have been ordered; even if statute were not applicable, denial of interest could not be affirmed as exercise of equitable discretion. *S. Kiser et al. v. H. Huger et al.* (1974, 517 F.2d 1237, 170 U.S. App. D.C. 407).

Interest before judgment

Since the issue of prejudgment interest was not argued at trial of insured's claim to recover, under insurance policy, a stipulated business interruption loss for restaurant destroyed by fire, and since no evidence was submitted on that question, no award of interest would be allowed the insured except from the date of judgment. *Emersons, Ltd., et ano. v. Max Wolman Company et ano.* (1975, 388 F.Supp. 729; aff'd 530 F.2d 1093, — U.S. App. D.C. —).

Chapter 3.—ENFORCEMENT OF JUDGMENTS AND DECREES

§ 15-301. Definition and applicability

NOTES TO DECISIONS

Judgment—Validity

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

Chapter 7.—FEES AND COSTS

§ 15-705. Exemption of District of Columbia and United States from fees, costs, and bonds

NOTES TO DECISIONS

Award of court costs to individual

Length of delay in implementing retroactive payment order of Commissioner of Department of Human Resources justifies an assessment of costs in form of a \$25 filing fee against administrative officers in their official capacity once petition in nature of mandamus to compel agency action was dismissed as moot after officers tardily performed requested action. *B. Dillard et ano. v. J. P. Yell-dell et al.* (D.C. App. 1975, 334 A.2d 578).

§ 15-712. Waiver of prepayment of costs in Superior Court

NOTES TO DECISIONS

Indigency

Where petitioners were on welfare except for one whose income was only slightly above welfare standard, denial of their petitions to proceed in forma pauperis so as to be relieved from payment of costs with respect to their actions for either divorce or annulment deprived them not only of statutory rights but of right to due process under Constitution. *R. A. Cabillo et al. v. R. Cabillo et al.* (D.C. App. 1974, 317 A.2d 866).

TITLE 16.—PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

Title 16 was enacted by Pub. L. 88-241, Dec. 23, 1963, 77 Stat. 536

Chapter 3.—ADOPTION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3-115.

§ 16-301. Jurisdiction; rules

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-302. Persons who may adopt

NOTES TO DECISIONS

Natural father

Where consent of mother had been given, director of social services had recommended that petition be granted, and there was no evidence of record indicating that proposed adoption would not be in best interests of child, court erred in denying petition of natural father to adopt illegitimate son. *In the Matter of the Petition for Adoption: J. H.* (D.C. App. 1974, 313 A. 2d 874).

§ 16-304. Consent

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Natural father

Where consent of mother had been given, director of social services had recommended that petition be granted, and there was no evidence of record indicating that proposed adoption would not be in best interests of child, court erred in denying petition of natural father to adopt illegitimate son. *In the Matter of the Petition for Adoption: J. H.* (D.C. App. 1974, 313 A. 2d 874).

Review

Findings of fact and conclusions of law were necessary in order to review dismissal of petition of maternal grandparents for adoption of minor grandchild, with respect to which the trial judge stated only that grandparents had not established the facts to justify the adoption and that withholding of consent by the natural father had not been contrary to the best interests of the child. *Petition of G.F.C., Jr. and L.M.C.* (D.C. App. 1974, 314 A. 2d 486).

Withdrawal of consent

Where consent to adoption was signed by natural father on August 30 and where father did not indicate desire to revoke consent until the following March 15, father was properly not permitted to withdraw his consent *In re Adoption of S. E. D.* (D.C. App. 1974, 324 A.2d 200).

§ 16-305. Petition for adoption

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Petition of step-parent, exclusion of race or religion, see § 16-308.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-308.

NOTES TO DECISIONS

Race and religion

Where Social Services Administration did not oppose petition filed by husband and wife of different racial background for adoption of child born of parents of a similar mixed racial background and had full knowledge of facts regarding parties' race and religion and trial court also possessed such information and indicated its approval of the adoption subject to filing of amended adoption petition including racial and religious information which was required by this section and which prospective adoptive parents had refused to include, the adoption petition would be considered amended to conform to information already possessed by the trial court. *In the Matter of V. M. DeF. et ano.* (D.C. App. 1973, 307 A. 2d 737).

§ 16-307. Investigation, report, and recommendation

* * * * *

(b) The investigation, report, and recommendation shall include:

(1) an investigation of:

(A) the truth of the allegations of the petition;

(B) the environment, antecedents,¹ and assets, if any, of the prospective adoptee, to determine whether he is a proper subject for adoption;

(C) the home of the petitioner, to determine whether the home is a suitable one for the prospective adoptee; and

(D) any other circumstances and conditions that may have a bearing on the proposed adoption and of which the court should have knowledge, including the existence and terms of a tentative adoption subsidy agreement entered into prior to the filing of the adoption petition under section 3 of the Act of July 26, 1892 (D.C. Code, sec. 3-115).

(2) a written report to the court of the findings of the investigation; and

(3) a recommendation to the court whether a final decree declaring the adoption prayed for in the petition should be immediately granted, or whether the court should grant an interlocutory decree granting temporary custody of the prospective adoptee to the petitioner, as hereinafter set forth.

* * * * *

¹ So in original. Probably should be "antecedents."

(As amended Jan. 2, 1974, Pub. L. 93-241, § 2(a), 87 Stat. 1061.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Act Jan. 2, 1974, Pub. L. 93-241, amended subsec. (b) (1) (D) by inserting immediately after "should have knowledge" the following: ", including the existence and terms of a tentative adoption subsidy agreement entered into prior to the filing of the adoption petition under section 3 of the Act of July 26, 1892 (D.C. Code, sec. 3-115)".

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3 of Act Jan. 2, 1974, Pub. L. 93-241, 87 Stat. 1061, provided: "The amendments made by this Act [amending §§ 3-114, 3-115, 3-117, 16-307, 16-309] shall take effect at the end of the ninety-day period beginning on the date of enactment of this Act."

§ 16-308. Investigations when prospective adoptee is adult or petitioner is spouse of natural parent.

The court may dispense with the investigation, report, and interlocutory decree provided for by this chapter when:

(1) the prospective adoptee is an adult; or

(2) the petitioner is a spouse of the natural parent of the prospective adoptee and the natural parent consents to the adoption or joins in the petition for adoption.

In the circumstances specified in (2) above, the petition need not contain the information concerning race and religion specified by subparagraphs (4) and (5) of section 16-305. (Dec. 23, 1963, 77 Stat. 539, Pub. L. 88-241, § 1, eff. Jan. 1, 1964; Oct. 30, 1975, D.C. Law 1-25, § 3, 22 DCR 2465.)

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-25, added last sentence.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 3 of Act Oct. 30, 1975, D.C. Law 1-25, provided: "This act [amending § 16-308] shall take effect upon becoming law by operation of the provisions of Section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147]."

SHORT TITLE

The first section of Act Oct. 30, 1975, D.C. Law 1-25, provided "That this act [amending § 16-308] may be cited as the 'Step-Parent Adoption Facilitation act'."

§ 16-309. Adoption proceedings

(b) After considering the petition, the consents, and such evidence as the parties and any other properly interested person may present, the court may enter a final or interlocutory decree of adoption when it is satisfied that:

(1) the prospective adoptee is physically, mentally, and otherwise suitable for adoption by the petitioner;

(2) the petitioner is fit and able to give the prospective adoptee a proper home and education; and

(3) the adoption will be for the best interests of the prospective adoptee.

In determining whether the petitioner will be able to give the prospective adoptee a proper home and education, the court shall give due consideration to any assurance by the Commissioner that he will provide or contribute funds for the necessary maintenance or medical care of the prospective adoptee under an adoption subsidy agreement under section 3 of the Act of July 26, 1892 (D.C. Code, sec. 3-115).

* * * * *

(As amended Jan. 2, 1974, Pub. L. 93-241, § 2(b), 87 Stat. 1061.)

AMENDMENT

1974—Act Jan. 2, 1974, Pub. L. 93-241, amended subsec. (b) by inserting at the end thereof a new sentence, relating to adoption subsidy agreements, to read as above set out.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 16-307.

NOTES TO DECISIONS

Appeal and error

Where consent of mother had been given, director of social services had recommended that petition be granted, and there was no evidence of record indicating that proposed adoption would not be in best interests of child, court erred in denying petition of natural father to adopt illegitimate son. *In the Matter of the Petition for Adoption: J. H.* (D.C. App. 1974, 313 A. 2d 874).

§ 16-311. Sealing and inspection of records and papers

NOTES TO DECISIONS

Access to investigative report

It was not an abuse of discretion for trial court to deny natural father's oral request for access to sealed report on proposed adoption prepared by Social Rehabilitation Administration. *In re Adoption of S. E. D.* (D.C. App. 1974, 324 A.2d 200).

§ 16-314. Birth certificates

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—ATTACHMENT AND GARNISHMENT

SUBCHAPTER I.—ATTACHMENT AND GARNISHMENT GENERALLY

§ 16-501. Attachment before judgment; affidavit and bond

NOTES TO DECISIONS

Judgment—Validity

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

Restraining order in lieu of attachment

Where wife who was separated from her husband obtained a temporary restraining order on October 2, 1972, barring withdrawal of any of husband's retirement funds in account at first bank, claim of second bank, which had made payments to third party pursuant to checks signed by husband that had been presented to second bank on September 28, September 29, and October 2, 1972, is inferior to wife's where such claim did not become a lien on the funds until delivery of second bank's attachment before judgment to United States marshal on October 11,

1972, and second bank is not entitled to payment until attachment first served was paid. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

§ 16-503. Attachment for debts not due

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

§ 16-507. Property subject to attachment; liens; priorities

NOTES TO DECISIONS

Effective date of lien

Where wife who was separated from her husband obtained a temporary restraining order on October 2, 1972, barring withdrawal of any of husband's retirement funds in account at first bank, claim of second bank, which had made payments to third party pursuant to checks signed by husband that had been presented to second bank on September 28, September 29, and October 2, 1972, is inferior to wife's where such claim did not become a lien on the funds until delivery of second bank's attachment before judgment to United States marshal on October 11, 1972, and second bank is not entitled to payment until attachment first served was paid. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

SUBCHAPTER II.—ATTACHMENT AND GARNISHMENT AFTER JUDGMENT IN AID OF EXECUTION

§ 16-541. Definition and applicability

NOTES TO DECISIONS

Judgment—Validity

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

SUBCHAPTER III.—ATTACHMENT AND GARNISHMENT OF WAGES, ETC.

§ 16-571. Definitions

NOTES TO DECISIONS

Judgment—Validity

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

§ 16-572. Attachment of wages; percentage limitations; priority of attachments

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-575. Judgment against employer-garnishee for failure to pay percentages

NOTES TO DECISIONS

Failure to pay

Where judgment creditor served writ of attachment on judgment debtor's employer which answered one of the

interrogatories in the writ by stating amount of judgment debtor's biweekly gross wages and biweekly disposable earnings, failure of employer to continue to remit percentages of employee's wages as prescribed on writ of attachment entitled judgment creditor to judgment against employer. *Household Finance Corporation v. Training Research and Development, Inc.* (D.C. App. 1974, 316 A.2d 850).

Chapter 6.—BONDS AND UNDERTAKINGS

§ 16-601. Undertaking in lieu of fiduciary's bond

NOTES TO DECISIONS

Default by principal

Where all of defaults on part of trustee occurred subsequent to period governed by auditor's report, guardian which moved to surcharge trustee and her surety for trustee's alleged misappropriation of trust funds of minor beneficiary was not required to seek to set aside the auditor's report. *B. E. Schilt, Successor Guardian etc. v. M. B. Duvall, Trustee, et ano.* (1973, 479 F. 2d 1228, 156 U.S. App. D.C. 245).

Under statute providing for entry of judgment against trustee and surety upon default by principal in any of conditions of undertaking or bond, judgment may be entered, upon motion, in action in which undertaking is filed, as an alternative to an independent action. *Id.*

Where trustee of minor's estate failed to transfer assets to herself in her capacity as guardian as required by law and express order of court, but instead had trust funds withdrawn from trust account paid to her individually or to her credit in Totten trust, such was a misappropriation of trust funds and constituted prior defaults for which trustee's surety was liable. *Id.*

Chapter 7.—CRIMINAL PROCEEDINGS IN THE SUPERIOR COURT

§ 16-706. Enforcement of judgments; commitment upon non-payment of fine

NOTES TO DECISIONS

Imprisonment for nonpayment

Superior Court is authorized to order commitment for term as long as one year to enforce payment of court-ordered fine, provided purpose of such alternative is to compel payment of fine rather than to impose imprisonment for term longer than that specified for offense. *G. A. Batres v. District of Columbia* (D.C. App. 1975, 347 A.2d 585).

— Indigents

In view of rule that where defendant is indigent, jail sentence imposed as alternative to payment of fine should not exceed maximum prescribed for offense, indigent defendant who was convicted of tampering with an automobile would be remanded for resentencing, with alternative sentence in default of payment of \$100 fine not to exceed ten days. *G. A. Batres v. District of Columbia* (D.C. App. 1975, 347 A.2d 585).

Chapter 9.—DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC.

§ 16-904. Grounds for divorce, legal separation and annulment

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

NOTES TO DECISIONS

Abuse of discretion

Pendency of defendant wife's divorce action in Maryland is not a bar to husband's District of Columbia divorce action, and stay of the District of Columbia action is discretionary as a matter of comity, which discretion was not abused in view of evidence that wife had not diligently prosecuted her action in Maryland. *C. L. Archuleta v. J. E. Archuleta* (D.C. App. 1975, 345 A.2d 157).

Counsel fees

Where attorney for defendant wife in divorce case was awarded a substantial fee for his services in trial court, and where husband appeared to be of limited means, wife's attorney would be awarded a fee of \$200 for his representation on appeal. *C. L. Archuleta v. J. E. Archuleta* (D.C. App. 1975, 345 A.2d 157).

Evidence—Sufficiency

Evidence in husband's divorce action brought on ground of voluntary separation for one year is sufficient to warrant a finding of voluntary separation for the required period. *C. L. Archuleta v. J. E. Archuleta* (D.C. App. 1975, 345 A.2d 157).

Foreign decree

Divorce received in Mexico was void where neither party was domiciled in Mexico or even physically present there except for few hours in year divorce was obtained, and where absent spouse merely executed power of attorney, but entered no appearance in Mexican court. *A. S. Clagett v. J. D. B. King* (D.C. App. 1973, 308 A. 2d 245).

Laches and estoppel

Where two couples obtained Mexican divorces which were invalid because none of four parties was domiciled in Mexico, two of them merely spent a few hours in that country in year when divorces were obtained and absent spouses merely executed powers of attorney but entered no appearance in Mexican court, husband, who later married the other's supposed ex-wife, was estopped from challenging Mexican decrees on jurisdictional grounds in suit to annul his second marriage. *A. S. Clagett v. J. D. B. King* (D.C. App. 1973, 308 A. 2d 245).

Record on appeal

Duty rests primarily on the appellant to bring up an adequate record for review. *D. Dulles v. P. Dulles* (D.C. App. 1973, 302 A.2d 59; cert. denied 94 S. Ct. 1432, 415 U.S. 926).

An appellee has duty to insure adequate record so judgment in his favor may be upheld and may not abdicate this responsibility. *Id.*

Approval of Statement of Proceedings and Evidence lies with trial court, and it is that court's ultimate responsibility to bring about an adequate record for review. *Id.*

Where no reporter's transcript to trial was before the Court of Appeals and trial court certified to the court a Statement of Proceedings and Evidence which it expressly disapproved, Court of Appeals had no record on which to conduct its review of case and would remand case for further proceedings. *Id.*

Separation agreement

Where separation agreement recited that the parties had decided to settle all their present and future property rights and matters of custody, support and maintenance and that support payments to wife were to continue until she remarried or died, subsequent divorce had no effect on the continued validity of such agreement though the agreement said nothing about eventual divorce. *R. L. Mohler v. P. A. Mohler* (D.C. App. 1973, 302 A. 2d 737).

Where separation agreement was incorporated in decree of separate maintenance and support, wife's alleged unreasonable denial to husband of visitation with children would not be a matter of breach of contract but would be a matter of breach of the decree, and husband's remedy was not to unilaterally disregard the provisions of the decree by withholding support payments and by refusing to execute certain documents required for distribution of property. *Id.*

Where husband and wife entered into separation agreement which was incorporated in decree of separate maintenance and support, wife's alleged unreasonable denial to husband of visitation with his children would not constitute basis for revision by court of support payments provided in the agreement, absent contention that husband was no longer able to make the payments or that there had been substantial change in his financial situation. *Id.*

Matter of husband's liability for wife's attorney fees in connection with husband's motion that decree of separate maintenance and support be set aside and that court

enter order determining the respective rights of the parties anew was within the sound discretion of the trial court. *Id.*

Voluntary separation

One of the essential elements that must be established by party moving for a divorce based upon voluntary separation is that separation was voluntary for the statutory period. *A. M. Lee v. B. N. Lee* (D.C. App. 1973, 307 A. 2d 757).

Wife who asked husband to return home for benefit of child but did not ask husband to return and resume marriage did not manifest a desire to resume marital relationship and thus did not exhibit the plain or open showing necessary to change characterization of their voluntary separation. *Id.*

§ 16-910. Dissolution of property rights; jurisdiction of court

NOTES TO DECISIONS

Apportionment of jointly held property

Dividing marital property equally among the parties who are both employed and who had contributed equally to purchase and upkeep of property was not an abuse of discretion. *A. M. Lee v. B. N. Lee* (D.C. App. 1973, 307 A. 2d 757).

Division of property

Neither this section which empowers the domestic relations branch of the Superior Court to apportion, upon entry of final decree of divorce, property which is jointly owned by the spouses, nor section 16-912 giving the Court broad discretion to award alimony and continue a wife's dower interest, empowers the Court to grant to wife any interest in property solely owned by husband. *D. C. McGean v. H. O. McGean* (D.C. App. 1975, 339 A.2d 384).

Evidence

Evidence of wife's financial contributions was properly excluded where it was not sought to be introduced on issue of alimony but on question of wife's entitlement to property. *J. L. Sirianni v. J. F. Sirianni* (D.C. App. 1975, 338 A.2d 101).

Jurisdiction—Over foreign property

Because real property whose ownership was in dispute in divorce action was located in Maryland, Superior Court is empowered to "determine" and "adjudicate" the couple's rights to the property, but has no power to "award" or "apportion" the foreign property. *D. C. McGean v. H. O. McGean* (D.C. App. 1975, 339 A.2d 384).

Property rights

In attempting to show existence of purchase money resulting in trust in favor of wife, payments by wife subsequent to conveyance, made in accordance with original intention and understanding established by initial payment, may be included in her beneficial interest, but any payments, which must go toward the purchase price, made subsequent to time of conveyance must be in fulfillment of an obligation to pay incurred by wife at or before time of conveyance if they are to be included in her beneficial interest; payments made voluntarily, or pursuant to an arrangement entered into after the conveyance, may not be included. *D. C. McGean v. H. O. McGean* (D.C. App. 1975, 339 A.2d 384).

Evidence that deed to Maryland property used by parties in divorce action as a homestead was in name of husband only, that he was solely liable on the mortgage, and that wife had contributed \$400 to original purchase price of the property, does not justify holding that wife had a one-half interest in the property, whether based either on a finding of an agreement between the spouses that the property is jointly owned, or on a finding that wife is beneficiary of a resulting trust in that amount. *Id.*

Property settlement agreements

Even if communications between attorneys for parties constituted agreement that husband would give up specified property interests and that wife would expedite divorce action by not contesting it, such agreement was rescinded by mutual consent where husband breached purported agreement by insisting that his name be removed from mortgage, the case, which parties had originally intended to be heard on uncontested calendar, was then set for trial, and wife thereafter acted in manner incon-

sistent with agreement. *J. L. Sirianni v. J. F. Sirianni* (D.C. App. 1975, 338 A.2d 101).

— Statute of frauds

Husband's authorizing filing of pretrial praecipe and withdrawing countersuit in divorce proceeding commenced by wife is sufficient to bring oral agreement, which had been negotiated with consent of husband and wife, and which provided that title to marital estate was to be given to husband in return for cash payment and withdrawal of countersuit, outside statute of frauds, and thus trial court, after verifying consent of wife, was in error in refusing to hold that parties were bound by such agreement. *C. J. Brown v. P. F. Brown* (D.C. App. 1975, 343 A.2d 59).

§ 16-911. Alimony pendente lite; suit money; enforcement; custody of children

NOTES TO DECISIONS

Counsel fees

Court erred in making awards of \$555 per month in alimony and child support and \$1,300 for attorney's fees and suit expenses where court did not first determine amount of husband's net monthly income and where record showed that husband's gross income was \$16,041 per year, husband owed over \$8,000 to local creditors requiring payments of almost \$410 per month, he had no source of income other than salary, owned no securities or real estate, and had only \$600 in savings. *D. H. Grasty v. C. A. Grasty* (D.C. App. 1973, 302 A.2d 218).

Enforcement of future payments

Where husband entered into separation and property settlement with wife in May, 1971, departed for foreign country in April, 1972, and entered into consent order in February, 1973, which acknowledged arrearages and directed that he pay wife certain sum per month, injunction and temporary restraining order obtained by wife in October, 1972, barring withdrawal of husband's retirement funds from first bank, is sufficient to give wife priority over claim to husband's funds of second bank which had paid husband's checks on September 28, September 29, and October 2, 1972, and which obtained lien on the funds in first bank on October 11, 1972, since wife's claim included future support and alimony installments not yet accrued and owing. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

§ 16-912. Permanent alimony; enforcement; retention of dower

NOTES TO DECISIONS

Advisory opinions

It was beyond power of trial court to state in its judgment for absolute divorce that because the subject of alimony was not mentioned in the property settlement agreement, the wife was foreclosed from claiming alimony at the present or any time in the future, since court could not render opinion on issue that may or may not arise. *E. R. Smith v. D. L. Smith* (D.C. App. 1973, 310 A.2d 229).

Amount

Court erred in making awards of \$555 per month in alimony and child support and \$1,300 for attorney's fees and suit expenses where court did not first determine amount of husband's net monthly income and where record showed that husband's gross income was \$16,041 per year, husband owed over \$8,000 to local creditors requiring payments of almost \$410 per month, he had no source of income other than salary, owned no securities or real estate, and had only \$600 in savings. *D. H. Grasty v. C. A. Grasty* (D.C. App. 1973, 302 A.2d 218).

Award of alimony of \$900 per month to wife was not plainly wrong or without substantial evidence to support it in divorce action, where in making such determination consideration was given to the 14-year duration of the marriage, to the parties' standard of living based on the husband's 1971 gross income of \$67,000 earned as a practicing physician, to the future earning prospects of each, to wife's continuing medical problems, and to her inability to hold a job in "stressful situations." *J. O. Bradt v. G. C. Bradt* (D.C. App. 1973, 300 A.2d 445).

Enforcement of future payments

Where husband entered into separation and property settlement with wife in May, 1971, departed for foreign

country in April, 1972, and entered into consent order in February, 1973, which acknowledged arrearages and directed that he pay wife certain sum per month, injunction and temporary restraining order obtained by wife in October, 1972, barring withdrawal of husband's retirement funds from first bank, is sufficient to give wife priority over claim to husband's funds of second bank which had paid husband's checks on September 28, September 29, and October 2, 1972, and which obtained lien on the funds in first bank on October 11, 1972, since wife's claim included future support and alimony installments not yet accrued and owing. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

Evidence

Evidence of wife's financial contributions was properly excluded where it was not sought to be introduced on issue of alimony but on question of wife's entitlement to property; and absence of any evidence offered to substantiate need for alimony constituted sufficient basis for denial of requested equitable relief, denominated "alimony in futuro." *J. L. Sirianni v. J. F. Sirianni* (D.C. App. 1975, 338 A.2d 101).

— Admissibility

Policy considerations against admission into evidence of compromise offers, which include encouraging settlement of disputes without trial and enabling a litigant to buy his peace without fear of future collateral consequences and subsequent litigation with third parties were not applicable to agreement by husband in divorce action to pay \$850 per month alimony pendente lite, since payment of alimony during pendency of an action for divorce is a preliminary step in the statutory scheme governing disposition of marital suits which differs from an offer to compromise in order to settle a dispute and avoid litigation. *J. O. Bradt v. G. C. Bradt* (D.C. App. 1973, 300 A.2d 445).

Justiciability

Determination of right of wife to claim alimony can be made only when parties' rights may be immediately affected by such judicial decision. *E. R. Smith v. D. L. Smith* (D.C. App. 1973, 310 A.2d 229).

Property rights

Neither section 16-910 which empowers the domestic relations branch of the Superior Court to apportion, upon entry of final decree of divorce, property which is jointly owned by the spouses, nor this section giving the Court broad discretion to award alimony and continue a wife's dower interest, empowers the Court to grant to wife any interest in property solely owned by husband. *D. C. McGean v. H. O. McGean* (D.C. App. 1975, 339 A.2d 384).

Separation agreement

Original support order in divorce case is conclusive on the parties where there is no showing by husband of a material change since time of decree in his ability to pay or in the needs of the children. *D. C. McGean v. H. O. McGean* (D.C. App. 1975, 339 A.2d 384).

Support provisions of separation agreement incorporated in divorce decree were modified, and husband could not be held in contempt for failure to comply therewith, where in subsequent custody and support proceeding court indicated, with acquiescence of wife's counsel, that support matters would be left for determination after custody matter, and custody was later awarded to husband, with observation that support would not be awarded wife. *L. A. Craig v. P. S. Craig* (D.C. App. 1973, 305 A.2d 267).

Settlement agreement

Although parents agreed to \$20 per week child support, action of trial court in awarding \$25 per week child support, after hearing testimony as to needs of child, ability of husband to pay, and financial circumstances of parties, is within scope of trial court's discretion. *C. J. Brown v. P. F. Brown* (D.C. App. 1975, 343 A.2d 59).

§ 16-913. Alimony when divorce is granted on husband's application

NOTES TO DECISIONS

Amount of alimony

Where trial court in awarding alimony to wife in action granting divorce on husband's application merely stated

that it found the husband to be able to underwrite an alimony award but made no mention of fact that wife required any amount for her support or how it arrived at amount granted as alimony, case would be remanded to trial court for a more detailed statement of reasons for the action taken. *C. V. Wood v. M. K. Wood* (D.C. App. 1973, 309 A.2d 103).

Award

Where trial court heard evidence on issue whether alimony should be granted, and amount thereof, it was not fatal for court to use "support" in lieu of "alimony." *E. A. Mitchell, Jr. v. K. M. Mitchell* (D.C. App. 1973, 310 A.2d 837).

It would have been better practice for court to specify how much of amount awarded was alimony for wife, but failure to do so was not fatal. *Id.*

Contempt

Where husband was not, in divorce order and judgment, punished for his disobedience of previous pendente lite orders, and where trial court imposed no remedial or coercive sanctions conditioned upon husband's obedience to contempt order, the order lacked the certainties, specificity and finality essential for judicial review, and provision of the order relating to wife's entitlement to permanent alimony, being inextricably a part of the contempt order, would have to share the infirmities of such order. *J. W. Ashcraft v. C. T. Ashcraft* (D.C. App. 1974, 318 A.2d 284).

§ 16-914. Retention of jurisdiction as to alimony and custody of children

NOTES TO DECISIONS

Ability to pay

Failure to make specific findings as to husband's ability to pay does not preclude affirmance of order modifying husband's monthly child support obligation, where issue of husband's ability to pay was not raised in trial court. *D. A. Smith v. S. S. Smith* (D.C. App. 1975, 344 A.2d 221).

Care and custody of children

In proceeding in which former husband sought to modify divorce decree, trial court's determination, which was based on evaluations by psychiatrist and intrafamily and neglect branch, interviews with children, and testimony and arguments of counsel for both husband and wife, who, pursuant to agreement entered into by parties, had previously had custody of children, that best interests of minor children would be better served by warding custody to husband is not abuse of discretion. *K. S. Ross v. S. Ross* (D.C. App. 1975, 339 A.2d 447).

Where trial court, in proceeding on motion by wife, after absolute divorce, seeking to increase support payments and to modify husband's visitation rights, sua sponte raised issue of custody of children and adjourned the proceedings pending preparation of report on social, psychiatric and other related evaluations of both parents by the director of social services, refusal at adjourned hearing to permit counsel for husband and wife to litigate contents of report or to permit cross-examination of the persons who authorized the report violated due process. *J. L. Ziegler v. R. T. Ziegler* (D.C. App. 1973, 304 A.2d 13).

Counsel fees

In view of husband's unilateral withholding of part of weekly support payments as required by separation agreement, the interests and welfare of children were clearly affected and in issue, and hence award of counsel fees was proper. *R. L. Mohler v. P. A. Mohler* (D.C. App. 1973, 305 A.2d 520).

Where legal custody of children had been placed in mother, and father by series of proceedings sought to change or modify their custody, and trial court found that mother's opposition to father's claim was for the best interests of the children, award of counsel fees to mother, not as counsel fees per se but as reimbursement to her for necessities for the minor children, was within jurisdiction of Domestic Relations Branch of Court of General Sessions. *R. E. Paine, Jr. v. E. S. Paine* (D.C. App. 1970, 267 A.2d 356).

In action instituted against or by mother with respect to custody of minor children, mother is not entitled to recover counsel fees from father if litigation was brought about by her own misconduct or instituted for her own selfish reasons, but court may require reimbursement when it finds that engagement of counsel by mother was necessary to protect the interests and welfare of the children. *Id.*

Discretion of court

In proceeding seeking modification of support decree, trial court did not abuse its discretion by refusing to modify alimony obligation of husband whose income was decreased as result of his election to voluntarily retire. *J. C. Tydings v. G. E. Tydings* (D.C. App. 1975, 349 A.2d 462).

Fair hearing

At hearing on divorced husband's motion to reduce alimony and child support, remarks of trial court referring to the thickness of the court jacket already existing in the case do not demonstrate such a bias on the part of the trial court as to deprive husband of a fair hearing. *C. C. Kieffer v. B. D. Kieffer* (D.C. App. 1975, 348 A.2d 887).

Findings of fact

Though findings of trial court, in denying motion to reduce alimony and child support, stating only that movant husband had failed to carry his burden of proof are less than what would normally be required, case will not be remanded where husband, who bore burden of proving a diminution of income since prior order in the case, admitted at hearing in the trial court and oral argument on appeal that his income has not changed since the prior order. *C. C. Kieffer v. B. D. Kieffer* (D.C. App. 1975, 348 A.2d 887).

Reduction of alimony

Where, following hearing in February 1974, divorced husband's motion for reduction in alimony and child support was denied despite his loss of a major client, and order entered at that time was not appealed, such order stands as a binding determination that as of February the existing alimony and support award was not so onerous as to require modification, and thus in October 1974 hearing on new motion for reduction, husband is limited to change in circumstances since February, and loss of said client cannot be placed in issue as showing change of circumstances. *C. C. Kieffer v. B. D. Kieffer* (D.C. App. 1975, 348 A.2d 887).

§ 16-916. Maintenance of wife and minor children; maintenance of former wife; maintenance of minor children; enforcement

NOTES TO DECISIONS

Ability to pay

In action for separate maintenance and support where husband is professional man with history of substantial earnings, extensive real estate holdings, and large cash flow of bank deposits, it is sufficient that trial court satisfy itself from sum total of evidence that husband has ability to maintain his wife and children in manner comparable to standard of living to which parties were accustomed at time of separation, and has refused to do so. *D. Cefaratti, Jr. v. H. Cefaratti* (D.C. App. 1974, 315 A.2d 142).

Abuse of discretion

Whether or not father receives, on motion to adjudicate father in contempt for failure to comply with most recent court order for payment of support for divorced wife and their child, credit for amounts paid in excess of initial court order but in keeping with provisions of separation agreement incorporating such initial court order is matter within discretion of trial court, and in view of court's findings that needs of minor child could not be satisfied by payments made in the past, denial of such credit is not an abuse of discretion. *R. T. Foley v. S. A. Foley* (D.C. App. 1975, 336 A.2d 549).

Amount of award

Award of \$1,350 per month for separate maintenance and support of three minor children was within range of court's permissible discretion on evidence showing that husband was successful attorney whose income had

fluctuated between \$30,000 and \$60,000 for several years. *D. Cefaratti, Jr. v. H. Cefaratti* (D.C. App. 1974, 315 A. 2d 142).

Child support

Award of child support was a matter committed to trial court's discretion and included consideration of father's welfare and enforcement of his obligation commensurate with his financial ability to pay. *C. J. Roberson v. J. Roberson* (D.C. App. 1972, 297 A. 2d 769).

Absent a showing of abuse, order requiring husband to pay \$22.50 per week for support of child of tender years did not constitute abuse of discretion and would not be disturbed on appeal. *Id.*

Contempt

Finding that husband had wilfully disobeyed separate maintenance and support order was sufficient to support adjudication of contempt. *D. Cefaratti, Jr. v. H. Cefaratti* (D.C. App. 1974, 315 A. 2d 142).

Counsel fees

Where divorced wife was 81 years of age, her income was \$131 a month and, in order to meet her current living expenses, she had to borrow money from her son, so that if she were required to pay her counsel fees, her action to enforce court agreement requiring former husband to pay her \$150 a week would hardly be worth the effort, award of counsel fees was not improper. *R. Marlowe v. C. Marlowe* (D.C. App. 1973, 310 A. 2d 59).

Enforcement of future payments

Where husband entered into separation and property settlement with wife in May, 1971, departed for foreign country in April, 1972, and entered into consent order in February, 1973, which acknowledged arrearages and directed that he pay wife certain sum per month, injunction and temporary restraining order obtained by wife in October, 1972, barring withdrawal of husband's retirement funds from first bank, is sufficient to give wife priority over claim to husband's funds of second bank which had paid husband's checks on September 28, September 29, and October 2, 1972, and which obtained lien on the funds in first bank on October 11, 1972, since wife's claim included future support and alimony installments not yet accrued and owing. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

Income tax

That portion of order requiring husband to pay federal and state income tax on wife's maintenance and support payment was eliminated by reviewing court where there was nothing in record regarding extent of wife's estate or federal tax liability nor any foundation regarding state tax law which, even on approximation, might be reached as to what her tax liability might be and wife had been granted rather liberal monthly award for support and maintenance of herself and children. *R. Foer v. E. Foer* (D.C. App. 1972, 297 A. 2d 339).

Jurisdiction

Temporary restraining order obtained by wife on October 2, 1972, barring any withdrawal of husband's retirement funds in account at first bank, is a sufficient seizure of the funds to give the court in rem jurisdiction so as to permit determination of who is entitled to the funds, in case where second bank made a claim against the funds, husband had entered into separation and property agreement with wife in May, 1971, providing for alimony and child support, husband resigned his government position and departed for a foreign country in April 1972, apparently intending to seek a permanent residence there, and husband made no further alimony or support payments after July, 1972. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

Separate maintenance

When a wife leaves marital abode without just cause, her desertion is a bar to a claim for separate maintenance. *C. J. Roberson v. J. Roberson* (D.C. App. 1972, 297 A. 2d 769).

Separation agreement

Where husband and wife agreed by separation agreement that court order concerning support for wife and

child would remain in force, and order was incorporated in agreement, subsequent divorce decree does not abrogate the order, which continues in force except as modified by subsequent order. *R. T. Foley v. S. A. Foley* (D.C. App. 1975, 336 A.2d 549).

Wife is precluded from seeking support for herself in excess of that provided by separation agreement, but court is not precluded from increasing child support payments in excess of monthly sum provided for by the agreement, where court found that needs of child had increased and husband was able to pay. *Id.*

Separation agreement which relieved husband of obligation to pay \$500 monthly if wife's gross income exceeded \$840 monthly and that if she earned less than \$840 husband should pay proportion of \$500 equal to proportion of wife's "gross income" to \$840 did not reflect intent and, where wife received disability retirement of \$409, husband would be required to pay proportion of \$500 equal to proportion \$409 bore to wife's loss of earnings. *P. M. Lewis v. D. Lewis* (D.C. App. 1973, 300 A. 2d 720).

Support agreement—Modification

Fact that husband's financial circumstances had changed for the worse since execution of separation and property settlement agreement, which obligated husband to pay child support and related expenses but which was not incorporated into divorce decree, did not justify modification of child support provisions, in absence of overreaching, fraud, duress or concealment. *S. S. Lanahan v. J. A. Nevius* (D.C. App. 1974, 317 A. 2d 521).

— Specific performance

Although divorced husband's salary had been reduced from \$60,000 to \$14,000 a year as a result of stockholders' derivative suit brought by former wife, where husband failed to explain adequately why he could not liquidate his personal assets worth more than \$500,000 or use them as collateral for a loan, trial court did not abuse its discretion in awarding specific performance of support agreement requiring him to pay \$150 a week for support of wife. *R. Marlowe v. C. Marlowe* (D.C. App. 1973, 310 A. 2d 59).

§ 16-918. Appointment of counsel; compensation

NOTES TO DECISIONS

Attendance at hearing

An attorney appointed pursuant to statute providing that in all uncontested divorce cases, and in any other divorce or annulment case where the court deems it necessary or proper, a disinterested attorney shall be appointed by the court to enter his appearance for the defendant and actively defend his cause, must be present at a divorce fact-finding hearing, even if he has been unable to contact the defendant, and it was error to grant a divorce without a fact-finding hearing at which the appointed attorney was present. *C. B. Campbell v. L. G. R. Campbell* (D.C. App. 1974, 325 A. 2d 188).

§ 16-921. Validity of marriage, action to determine

NOTES TO DECISIONS

Estoppel

Where two couples obtained Mexican divorces which were invalid because none of four parties was domiciled in Mexico, two of them merely spent a few hours in that country in year when divorces were obtained and absent spouses merely executed powers of attorney but entered no appearance in Mexican court, husband, who later married the other's supposed ex-wife, was estopped from challenging Mexican decrees on jurisdictional grounds in suit to annul his second marriage. *A. S. Clagett v. J. D. B. King* (D.C. App. 1973, 308 A. 2d 245).

Validity of foreign divorce

Divorce received in Mexico was void where neither party was domiciled in Mexico or even physically present there except for few hours in year divorce was obtained, and where absent spouse merely executed power of attorney, but entered no appearance in Mexican court. *A. S. Clagett v. J. D. B. King* (D.C. App. 1973, 308 A. 2d 245).

Chapter 10.—PROCEEDINGS REGARDING INTRA-FAMILY OFFENSES

§ 16-1001. Definitions

NOTES TO DECISIONS

Intra-family offense

Relationship between mother, her assaulted child, and the defendant, who had been living with the mother for about three years at the time of the conduct involved, was close enough to require the government to notify the Director of Social Services of the offenses, but the failure to notify did not compel dismissal of the case on defendant's appeal from his convictions, since it would be inappropriate to permit defense counsel to remain silent as to possible intrafamily treatment of the case and then readily achieve a dismissal on appeal. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

§ 16-1002. Complaint of criminal conduct; referrals to Family Division

NOTES TO DECISIONS

Prosecution

Ultimate control of the handling of an intrafamily offense is vested in the United States attorney, and only in an extreme case might dismissal be the appropriate judicial response to a failure to notify the director of social services. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Chapter 11.—EJECTMENT AND OTHER REAL PROPERTY ACTIONS

SUBCHAPTER I.—EJECTMENT

§ 16-1103. Contents of complaint; adverse possession

CROSS REFERENCES

Eviction, see § 45-1653.

Retaliatory action by landlord in rent control cases prohibited, see § 45-1654.

Chapter 13.—EMINENT DOMAIN

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5-104, 6-505, 40-804.

SUBCHAPTER II.—REAL PROPERTY FOR DISTRICT OF COLUMBIA

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5-704, 5-1005, 11-921, 16-1303.

§ 16-1311. Condemnation proceedings by District of Columbia

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-1314. Declaration of taking; contents; deposit; transfer of title; determination; interest

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-1319. Payment of award; transfer of title

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-1321. Abandonment of proceedings; liability

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER III.—EXCESS PROPERTY FOR DEVELOPMENT OF SEAT OF GOVERNMENT

§ 16-1331. Acquisition of property in excess of needs

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-1332. Sale of excess property; restrictions on use; fair market value; disposition of moneys

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 16-1336. Condemnation of excess real property by Commissioner; payment of awards, damages, and costs; no assessments for benefits

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER IV.—REAL PROPERTY FOR UNITED STATES

§ 16-1365. Appeal; deficiency judgment

NOTES TO DECISIONS

Finality

Order of possession to allow the Washington Metropolitan Area Transit Authority to conduct test boring in cemetery was subject to review by the Court of Appeals where, had such Court not stayed the order, the Authority would have taken possession and completed its borings before any review could have been had, leaving cemetery owner without remedy. *Washington Metropolitan Area Transit Authority v. One Parcel of Land, etc., et al.* (1975, 514 F.2d 1350, 169 U.S. App. D.C. 109).

Chapter 15.—FORCIBLE ENTRY AND DETAINER

§ 16-1501. Definition; summons

NOTES TO DECISIONS

Judgment on pleadings

In action by landlord for possession of leased realty, where tenant contended that oral promise of five renewals

of one-year lease was equivalent to a promise for the full five years and that it had made extensive renovations in reliance thereon, factual determination which was indispensable to a proper resolution of controversy could only be made on the basis of evidence adduced at trial and tenant should have been permitted to show what commitments were made by landlord's agent and nature and extent of its reliance thereon; motion for judgment on pleadings was improperly granted. *Amberger & Wohlfarth, Inc. v. District of Columbia* (D.C. App. 1973, 300 A.2d 460).

Jury trial

Since right to recover possession of real property was right ascertained and protected at common law, any party involved in suit under statutes of District of Columbia establishing summary procedure for recovery of possession of real property is entitled under Seventh Amendment to Constitution to trial by jury. *D. Pernell v. Southall Realty* (1974, 94 S.Ct. 1723, 416 U.S. 363; rev'g and rem'g 294 A.2d 490).

There is no right to a jury trial under District of Columbia statute in action for possession of leased land. *Amberger & Wohlfarth, Inc. v. District of Columbia* (D.C. App. 1973, 300 A.2d 460).

Laches

Equitable defense of laches was inapplicable to preclude landlord's possessory action, even though landlord had let many months go by after tenant had ceased to pay rent, where any prejudice suffered by tenant because of landlord's failure to act immediately after first default was largely self-imposed, in that as party to rental agreement tenant could not be ignorant of increasing financial obligations by reason of continued occupancy of premises and failure to pay rent. *National Capital Housing Authority v. L. Douglas* (D.C. App. 1975, 333 A.2d 55).

Stay of execution

All accrued and overdue rent must be unconditionally tendered before any stay of execution in summary possessory action can issue; thus, trial court has no discretion to stay judgment for summary possession for two years on condition that tenant pay accrued and overdue rent in monthly installments over such period in addition to such rent as would be regularly due by reason of continuing occupancy. *National Capital Housing Authority v. L. Douglas* (D.C. App. 1975, 333 A.2d 55).

Chapter 19.—HABEAS CORPUS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11-921, 11-2601.

§ 16-1901. Petition; issuance of writ

CROSS REFERENCE

Representation of indigents, see § 11-2601.

NOTES TO DECISIONS

Construction

This section providing that person committed, detained, confined or restrained from his lawful liberty "within the district" may petition for writ of habeas corpus does not restrict the jurisdiction of the United States District Court for the District of Columbia in any way in which a federal district court located elsewhere is not restricted but is at most an additional jurisdictional statute relating to particular local problems, and its "within the district" language should be construed in *pari materia* with the "within their respective jurisdictions" of federal habeas corpus statute. *J. E. McCall v. C. L. Swain et al.* (1975, 510 F.2d 167, 166 U.S. App. D.C. 214).

The phrase "within the district" in this section providing that person committed, detained, confined, or restrained from his lawful liberties within the District may petition for a writ of habeas corpus does not prohibit a court, whether the District Court or the Superior Court, located in the District from entertaining habeas corpus petitions from individuals confined within the District's correctional facilities located outside the District limits. *Id.*

Jurisdiction

With respect to habeas corpus petition of petitioner convicted for local crimes in the United States District

Court for the District of Columbia and confined in District of Columbia reformatory which was designated by the Attorney General as the appropriate facility in which the sentence was to be served, the director of the District of Columbia Department of Corrections and the superintendent of the reformatory were "federal officers or officials" within meaning of this section providing that petitions for writs of habeas corpus directed to federal officers and employees shall be filed in the United States District Court for the District of Columbia. *J. E. McCall v. C. L. Swain et al.* (1975, 510 F.2d 167, 166 U.S. App. D.C. 214).

Parties

With respect to inmates who were incarcerated in District of Columbia correctional complex in Virginia pursuant to sentences imposed by judges of United States District Court for the District of Columbia, warden of the complex was an "officer or employee of the United States" within this section permitting petitions for writs of habeas corpus directed to federal officers or employees to be heard by United States District Court for the District of Columbia and requiring all other such writs to be filed in the Superior Court for the District of Columbia. *E. J. Fitzgerald et al. v. M. J. Sigler et al.* (1974, 372 F. Supp. 889).

Director of District of Columbia Department of Corrections was not proper party to habeas corpus proceeding instituted in federal court by inmates who were incarcerated at District of Columbia correctional complex pursuant to sentences imposed by judges of United States District Court for the District of Columbia, as he was not the immediate custodian of the inmates. *Id.*

Place of confinement

Parolees who were incarcerated at District of Columbia correctional complex located in Virginia pursuant to sentences imposed by judges of United States District Court for the District of Columbia for offenses committed subsequent to their releases on parole were "confined" within District of Columbia within statute providing that a person must be committed, detained, confined or restrained within the District before writ of habeas corpus may be entertained in any court in the District. *E. J. Fitzgerald et al. v. M. J. Sigler et al.* (1974, 372 F. Supp. 889).

Prior proceedings

Prisoner's habeas corpus petition, in which he sought to compel Department of Corrections to recompute his sentence, was not barred by prior legal proceedings where, although prisoner had previously challenged computation of his sentence in two motions for reduction of sentence, record did not reveal that any other court had thoroughly considered issue raised in habeas corpus proceeding and United States Court of Appeals, in affirming second order denying prisoner's motion for reduction of sentence, did so without prejudice to appellant's filing of petition for habeas corpus in an appropriate forum. *J. T. Cogdell v. D. C. Jackson et al.* (1975, 397 F.Supp. 362).

Youthful offenders

While some delays are inevitable in the transfer of a youthful offender to a certified facility pursuant to the Federal Youth Corrections Act, such delay should not be permitted to become protracted, and if the length of an offender's detention in an adult facility becomes unduly long, the appropriate means of seeking relief is the submission to the trial court of a petition for habeas corpus. *G. E. Austin v. United States* (D.C. App. 1973, 299 A.2d 545).

§ 16-1908. Right of other persons to writ

CROSS REFERENCE

Representation of indigents, see § 11-2601.

Chapter 21.—JOINT CONTRACTS

§ 16-2101. Definition of joint and several contracts

NOTES TO DECISIONS

Construction

This section which provides that, for purpose of action thereon, contract and obligations entered into by two or more persons are deemed to be joint and several does

not affect substantive rights and duties of parties. *S. Clayman et ano. v. Goodman Properties, Inc.* (1973, 518 F.2d 1026, 171 U.S. App. D.C. 88).

Chapter 23.—FAMILY DIVISION PROCEEDINGS

SUBCHAPTER I.—PROCEEDINGS REGARDING DELINQUENCY, NEGLECT, OR NEED OF SUPERVISION

§ 16-2301. Definitions

CROSS REFERENCES

Federal Juvenile Delinquency Act, see 18 U.S.C. 5031 et seq.

Federal Youth Corrections Act, see 18 U.S.C. 5005 et seq.
Juvenile Justice and Delinquency Prevention Act of 1974, see 42 U.S.C. 5601 et seq.

Runaway Youth Act, see 42 U.S.C. 5701 et seq.

NOTES TO DECISIONS

Constitutionality

To the extent that First Amendment activities may be infringed when the "child in need of supervision" provision of this section is applied, the court, in balancing such infringement against the right and duty of a parent to teach, control and discipline a child, is obliged to grant the parent greater latitude in the First Amendment area than is permitted the state. *District of Columbia v. B. J. R.* (D.C. App. 1975, 332 A.2d 58).

This section defining the term "child" as not including an individual 16 years of age or older who is charged by the United States Attorney with certain enumerated offenses is not unconstitutional either as an arbitrary legislative classification or as a negation of the presumption of innocence. *United States v. J. T. Bland* (1972, 472 F. 2d 1329, 153 U.S. App. D.C. 254, rev'g and remand'g 330 F. Supp. 34; cert. denied 93 S. Ct. 2294, 412 U.S. 909).

Construction

Even if United States attorney's election to charge juvenile as an adult is made after he has been subject to jurisdiction of Family Division by reason of a delinquency petition filed against him, attorney's statutory authority to determine whether juvenile, who is 16 years of age and who is charged with certain enumerated offenses, should be charged as adult is unfettered by section 16-2307, which provides that, on corporation counsel's motion for transfer of child for trial as adult, transfer can be ordered only after a hearing to determine prospects for child's rehabilitation in Family Division. *L. B. Brown v. United States* (D.C. App. 1975, 343 A.2d 48).

The 1970 amendment of this section limiting jurisdiction, for juvenile offender purposes, to age of 16 when an individual of that age or beyond is charged by United States Attorney with enumerated violent crime was meant to work a substantive contraction of Juvenile Court's prior jurisdiction. *B. L. Pendergrast v. United States* (D.C. App. 1975, 332 A.2d 919).

The "child in need of supervision" provision of this section is not a criminal statute in the ordinary sense; it reinforces the authority of parents to control their children through the giving of reasonable and lawful commands, and it may be invoked when children repeatedly refuse to recognize their obligation to obey such commands. *District of Columbia v. B. J. R.* (D.C. App. 1975, 332 A.2d 58).

Custodian

Social worker was not a "custodian" in whom custody of child involved in juvenile proceeding could be placed pending fact-finding hearing; thus, order placing child in social worker's custody pending detention hearing was void and could be disobeyed with impunity and social worker's refusal to comply with order was not punishable as contempt. *In the Matter of I. E. Banks* (D.C. App. 1973, 306 A. 2d 270).

Delinquent act

Under statute which gives Family Division of the Superior Court jurisdiction over a child charged with a delinquent act, including an offense under the law of the District of Columbia or of a state or under federal law, act charged as a violation of a federal statute comes within the jurisdiction of the Family Division (Juvenile

Branch) of the Superior Court. *District of Columbia v. P. L. M.* (D.C. App. 1974, 325 A. 2d 600).

Dependency determination under prior law

Where nine-year-old girl had previously been adjudged a "dependent child," in that her natural mother had, when the child was four days old, consented to commitment of the child to the Child Welfare Division of the Department of Public Welfare, the child continued in that status, and there is no necessity for the trial court to make a "neglected child" finding in determining whether custody of the child should go to the natural mother or the child's foster parents with whom the child had lived virtually all her life. *In the Matter of N. M. S.* (D.C. App. 1975, 347 A.2d 924).

Due process

Decision vested in prosecutor whether juveniles, who are 16 years of age and who are charged with certain enumerated offenses, should be charged as adults is not subject to judicial review or to requirements of due process, at least in absence of particular circumstances of abuse of discretion. *L. B. Brown v. United States* (D.C. App. 1975, 343 A.2d 48).

"Child in need of supervision" provision of this section is not unconstitutionally vague; it gave appellee-child adequate warning that to abscond from home five times in four years, three of those times within the nine months preceding the filing of the petition alleging the appellee to be a child in need of supervision, would subject her to the sanctions provided for a child who is habitually disobedient of the reasonable and lawful commands of her parents. *District of Columbia v. B. J. R.* (D.C. App. 1975, 332 A.2d 58).

Exercise of the discretion vested by statute in United States Attorney to charge a person 16 years of age or older with certain enumerated offenses, thereby initiating that person's prosecution as an adult, is not violative of due process. *United States v. J. T. Bland* (1972, 472 F. 2d 1329, 153 U.S. App. D.C. 254, rev'g and remand'g 330 F. Supp. 34; cert. denied 93 S. Ct. 2294, 412 U.S. 909).

While there may be circumstances in which courts would be entitled to review the exercise of prosecutorial discretion as to whether a person should be charged as a juvenile or as an adult, those circumstances would necessarily include the deliberate presence of such factors as race, religion or other arbitrary classification. *Id.*

Exercise of discretion by the United States Attorney under statute, in part providing that the term "child" does not include an individual 16 years of age or older who is charged by the United States Attorney with certain enumerated offenses, is not violative of due process on theory that it denies the individual charged the presumption of innocence. *Id.*

Equal protection

Fact that, in federal jurisdictions other than that of the District of Columbia, juveniles who are charged with violation of federal law and who opt for treatment as an adult have the right of trial by jury does not mean that statute giving Superior Court of the District of Columbia primary jurisdiction over juvenile who is alleged to be delinquent, even though that delinquency is based on violation of federal law, denies equal protection. *District of Columbia v. P. L. M.* (D.C. App. 1974, 325 A. 2d 600).

Jurisdiction

Fact that verdict of not guilty of armed robbery was returned, in proceeding in which 16-year-old accused was charged as an adult, does not require that verdicts of guilty of robbery and assault with a dangerous weapon be certified to Family Division for disposition. *L. B. Brown v. United States* (D.C. App. 1975, 343 A.2d 48).

Superior Court may assume jurisdiction over a juvenile charged with violation of federal law whether or not the United States district court waives its jurisdiction under a "surrender statute." *District of Columbia v. P. L. M.* (D.C. App. 1974, 325 A. 2d 600).

Where juvenile is alleged to be delinquent on basis of violation of federal charge, the Family Division (Juvenile Branch) of the Superior Court, has primary, but not exclusive, jurisdiction over the matter. *Id.*

Until it is determined whether a person is a "child" within statutory definition, there is no family court jurisdiction; therefore, a fortiori, there can be no waiver

of jurisdiction. *United States v. J. T. Bland* (1972, 472 F. 2d 1329, 153 U.S. App. D.C. 254, rev'g and remand'g 330 F. Supp. 34; cert. denied 93 S.Ct. 2294, 412 U.S. 909).

§ 16-2302. Transfer of criminal matters to Family Division

NOTES TO DECISIONS UNDER PRESENT LAW

Construction

At time of juvenile's violation of narcotics laws in 1969, District of Columbia statute (§ 11-1552) relating to transfer of case to juvenile court from other courts required that United States District Court for the District of Columbia transfer case to Juvenile Court of the District of Columbia. *United States v. S. Williams* (1972, 351 F. Supp. 223).

Although no jurisdiction was obtained by United States District Court for District of Columbia over juvenile who violated narcotics laws in 1969, District of Columbia Court Reorganization Act of 1970, if it were applicable, could dictate a different result. *Id.*

NOTES TO DECISIONS UNDER PRIOR LAW

Jurisdiction

Federal district court lacked jurisdiction to hear 1969 case against juvenile, and order committing juvenile to custody of Attorney General would be vacated. *United States v. S. Williams* (1972, 351 F. Supp. 223).

§ 16-2304. Right to counsel

CROSS REFERENCES

Representation by Public Defender Service, see § 2-2222.

Representation of indigents, generally, see § 11-2601 et seq.

§ 16-2305. Petition; contents; amendment

NOTES TO DECISIONS

Habeas corpus

Proper remedy for minors contending that, after their adjudication as "children in need of supervision" had been invalidated, they were improperly confined in facility in which they could not have been kept except for such adjudication, was appropriate action in District of Columbia Superior Court, not petition for writ of habeas corpus in federal district court. *I. Brown et al. v. J. Yeldell et al.* (1973, 487 F. 2d 1210, 159 U.S. App. D.C. 339).

Where petitioners could suffer no adverse collateral consequences due to their adjudication as "children in need of supervision" because it had been invalidated by District of Columbia Court of Appeals, and where two-year commitments ordered as result of that adjudication had elapsed, petitioners suffered no present harm cognizable by writ of habeas corpus. *Id.*

Petition—Adequacy

Petition given to juvenile satisfies due process requirement of adequate notice applicable to juvenile proceedings even though it is claimed that the petition is defective for failing to allege ownership of the premises which he allegedly burglarized. *In the Matter of M. D. J.* (D.C. App. 1975, 346 A.2d 733).

— Amendment

Permitting government to amend count of petition filed in Juvenile Branch of Family Division to change name of robbery victim was within trial court's discretion and was not prejudicial where defense was alibi. *In the Matter of W. K.* (D.C. App. 1974, 323 A.2d 442).

Change in name of victim in petition filed in Juvenile Division of Family Court is not tantamount to charging a new offense. *Id.*

Superior Court has discretion to permit amendment of juvenile delinquency petition, which alleged violation of federal law, so as to allege violation of District law. *In the Matter of J. R. G.* (D.C. App. 1973, 305 A.2d 529).

Government in juvenile delinquency proceeding may move to amend petition at any time before conclusion of fact-finding hearing. *Id.*

— Dismissal

Superior Court's use of the phrase "social reasons" alone did not fulfill the requirement of Juvenile Court

Rule that the court, upon request of the corporation counsel, state why it was in the interests of justice and welfare of the child that delinquency petition be dismissed; moreover, effective appellate review would be impossible without a specific understanding of the reasoning applied by a trial court in reaching its conclusion that a juvenile petition should be dismissed without a fact finding hearing or an ultimate finding. *District of Columbia v. D. E. P.* (D.C. App. 1973, 311 A.2d 831).

Where focus of counsel was never directed to precise issue of whether petitions alleging delinquency should be dismissed and proceedings terminated in interests of justice and juveniles' welfare, government must be given opportunity to address itself to trial court as whether such considerations justified dismissal of the petitions; thus orders of dismissal would be vacated and cases remanded for further proceedings. *In the Matter of R. L. R.* (D.C. App. 1973, 310 A.2d 226).

Pleading

Rationale that purpose of pleading is to facilitate proper decision on merits has special significance in juvenile court proceedings. *In the Matter of J. R. G.* (D.C. App. 1973, 305 A.2d 529).

Prosecution

Question of whether corporation counsel or United States attorney should conduct proceedings charging juvenile with act of delinquency was not properly certifiable since juvenile was not involved in criminal prosecution. *In the Matter of M. W. F.* (D.C. App. 1973, 312 A.2d 302).

§ 16-2306. Service of summons and petition

NOTES TO DECISIONS

Habeas corpus

Proper remedy for minors contending that, after their adjudication as "children in need of supervision" had been invalidated, they were improperly confined in facility in which they could not have been kept except for such adjudication, was appropriate action in District of Columbia Superior Court, not petition for writ of habeas corpus in federal district court. *I. Brown et al. v. J. Yeldell et al.* (1973, 487 F. 2d 1210, 159 U.S. App. D.C. 339).

Where petitioners could suffer no adverse collateral consequences due to their adjudication as "children in need of supervision" because it had been invalidated by District of Columbia Court of Appeals, and where two-year commitments ordered as result of that adjudication had elapsed, petitioners suffered no present harm cognizable by writ of habeas corpus. *Id.*

§ 16-2307. Transfer for criminal prosecution

NOTES TO DECISIONS

Construction

Even if United States attorney's election to charge juvenile as an adult is made after he has been subject to jurisdiction of Family Division by reason of a delinquency petition filed against him, attorney's statutory authority to determine whether juvenile, who is 16 years of age and who is charged with certain enumerated offenses, should be charged as adult is unfettered by this section, which provides that, on corporation counsel's motion for transfer of child for trial as adult, transfer can be ordered only after a hearing to determine prospects for child's rehabilitation in Family Division. *L. B. Brown v. United States* (D.C. App. 1975, 343 A.2d 48).

Hearing

Although 17-year-old defendant was initially petitioned as a juvenile in Family Division on a charge of assault with intent to kill, a transfer hearing was not required before defendant, following death of victim some two months after the assault, could be charged by the United States Attorney as an adult with second-degree murder. *B. L. Pendergrast v. United States* (D.C. App. 1975, 332 A.2d 919).

Waiver

Until it is determined whether a person is a "child" within statutory definition, there is no family court jurisdiction; therefore, a fortiori, there can be no waiver of jurisdiction. *United States v. J. T. Bland* (1972, 472 F. 2d 1329, 153 U.S. App. D.C. 254, rev'g and remand'g 330 F. Supp. 34; cert. denied 93 S.Ct. 2294, 412 U.S. 909).

§ 16-2308. Initial appearance

NOTES TO DECISIONS

Habeas corpus

Proper remedy for minors contending that, after their adjudication as "children in need of supervision" had been invalidated, they were improperly confined in facility in which they could not have been kept except for such adjudication, was appropriate action in District of Columbia Superior Court, not petition for writ of habeas corpus in federal district court. *I. Brown et al. v. J. Yeldell et al.* (1973, 487 F. 2d 1210, 159 U.S. App. D.C. 339).

Where petitioners could suffer no adverse collateral consequences due to their adjudication as "children in need of supervision" because it had been invalidated by District of Columbia Court of Appeals, and where two-year commitments ordered as result of that adjudication had elapsed, petitioners suffered no present harm cognizable by writ of habeas corpus. *Id.*

§ 16-2310. Criteria for detaining children

NOTES TO DECISIONS

Custodian

Social worker was not a "custodian" in whom custody of child involved in juvenile proceeding could be placed pending fact-finding hearing; thus, order placing child in social worker's custody pending detention hearing was void and could be disobeyed with impunity and social worker's refusal to comply with order was not punishable as contempt. *In the Matter of I. E. Banks* (D.C. App. 1973, 306 A. 2d 270).

§ 16-2312. Detention or shelter care hearing; intermediate disposition

NOTES TO DECISIONS

Construction

Provisions of this section that, upon objection of child or his parent, a judge who conducted detention hearing shall not conduct a fact-finding hearing on petition operate to assure that judge who must make ultimate finding of guilty or not guilty is not predisposed toward guilt by having been exposed to testimony which may not be offered or may be inadmissible in fact-finding hearing. *In the Matter of W. N. W.* (D.C. App. 1975, 343 A.2d 55).

Custodian

Social worker was not a "custodian" in whom custody of child involved in juvenile proceeding could be placed pending fact-finding hearing; thus, order placing child in social worker's custody pending detention hearing was void and could be disobeyed with impunity and social worker's refusal to comply with order was not punishable as contempt. *In the Matter of I. E. Banks* (D.C. App. 1973, 306 A. 2d 270).

Reasons for detention

Reasons for entry of detention order phrased in statutory language which are ultimate conclusions are insufficient. *In the Matter of M. L. DeJ.* (D.C. App. 1973, 310 A. 2d 834).

Mere finding that order detaining juvenile to protect person of others is necessary solely because of "nature and circumstances of pending charge," standing alone, would not constitute sufficient grounds for detention. *Id.*

Recuse

Fact that trial judge had conducted suppression hearing concerning juvenile's waiver of Fifth and Sixth Amendment rights before he made a confession and that juvenile had testified at that hearing but did not testify at fact-finding hearing does not require trial judge to recuse himself from the fact-finding hearing which followed hearing on motion to suppress. *In the Matter of M. D. J.* (D.C. App. 1975, 346 A.2d 733).

Even though better course would have been for trial judge who conducted prior detention hearing on sodomy charge against 17-year-old defendant and heard prejudicial evidence regarding defendant's history of committing sexual attacks to recuse himself from subsequent fact-finding hearing on assault charge against defendant, where record revealed no untoward conduct by judge during fact-finding hearing and where there was no defense testimony and defendant's confession was received in evidence without objection, judge's decision not

to recuse himself does not require reversal. *In the Matter of W. N. W.* (D.C. App. 1975, 343 A.2d 55).

Where neither juvenile nor his attorney, both of whom had been present at pretrial detention hearing, requested trial judge to recuse himself, trial judge did not err in failing to recuse himself even though he had conducted the fact-finding hearing on the petition. *In the Matter of V. L. M.* (D.C. App. 1975, 340 A.2d 818).

§ 16-2314. Consent decree

NOTES TO DECISIONS

Dismissal

Superior Court's use of the phrase "social reasons" alone did not fulfill the requirement of Juvenile Court Rule that the court, upon request of the corporation counsel, state why it was in the interests of justice and welfare of the child that delinquency petition be dismissed; moreover, effective appellate review would be impossible without a specific understanding of the reasoning applied by a trial court in reaching its conclusion that a juvenile petition should be dismissed without a fact finding hearing or an ultimate finding. *District of Columbia v. D.E.P.* (D.C. App. 1973, 311 A. 2d 831).

Where focus of counsel was never directed to precise issue of whether petitions alleging delinquency should be dismissed and proceedings terminated in interests of justice and juveniles' welfare, government must be given opportunity to address itself to trial court as whether such considerations justified dismissal of the petitions; thus orders of dismissal would be vacated and cases remanded for further proceedings. *In the Matter of R.L.R.* (D.C. App. 1973, 310 A. 2d 226).

§ 16-2316. Conduct of hearings; evidence

NOTES TO DECISIONS

Confessions

Testimony by police officer that offer of immunity was made to juvenile was not made with respect to the instant case but rather with respect to past conduct sustains finding that juvenile's inculpatory statements were not based upon improper inducement by police officers. *In the Matter of M. D. J.* (D.C. App. 1975, 346 A.2d 733).

Court of Appeals rejected so-called "per se" rule arbitrarily holding any juvenile's statement involuntary absent presence of a parent or counsel and recognized that some juveniles who commit criminal acts were essentially as sophisticated, or more so, in such matters as many just over the age limit. *In the Matter of J.F.T.* (D.C. App. 1974, 320 A.2d 322).

Record indicating that consideration was given to juvenile's degree of experience with law enforcement, history of juvenile's refusal to answer questions during a previous arrest, willingness of juvenile to answer "some" questions, and fact that mother, though absent from police station, was told that she could be with her son during critical period and, within two hours, was advised of his place of detention and date of court appearance provided an adequate basis for concluding that juvenile's custodial confession in absence of his mother was the product of a knowing and intelligent waiver of relevant rights and was voluntarily given. *Id.*

Where officers continued to interrogate juvenile after juvenile indicated he wanted counsel, confession made by juvenile and evidence obtained as result of such confession were inadmissible in delinquency proceeding. *In the Matter of R. A. H.* (D.C. App. 1974, 314 A. 2d 133).

Evidence—Admissibility

Where following break up of altercation near front of tavern police officer was informed by unidentified person that one of the three participants, who went into tavern, had a gun, and on entering tavern officer observed four persons seated in a booth, one of whom answered description which had been given him, the officer had a duty to investigate and, in the process, to determine preliminarily whether described individual was armed; thus, pistol, which was observed on floor of booth, was admissible in delinquency proceeding. *District of Columbia v. M.E.H.* (D.C. App. 1973, 312 A. 2d 561).

Habeas corpus

Proper remedy for minors contending that, after their adjudication as "children in need of supervision" had been

invalidated, they were improperly confined in facility in which they could not have been kept except for such adjudication, was appropriate action in District of Columbia Superior Court, not petition for writ of habeas corpus in federal district court. *I. Brown et al. v. J. Yeldell et al.* (1973, 487 F. 2d 1210, 159 U.S. App. D.C. 339).

Where petitioners could suffer no adverse collateral consequences due to their adjudication as "children in need of supervision" because it had been invalidated by District of Columbia Court of Appeals, and where two-year commitments ordered as result of that adjudication had elapsed, petitioners suffered no present harm cognizable by writ of habeas corpus. *Id.*

Immunity

Statutory grant of immunity against the use "in any criminal case" of testimony which person claiming privilege against self-incrimination has been compelled to give extended to proceedings in juvenile court; thus, juvenile who claimed privilege against self-incrimination could be compelled to testify before grand jury despite contention that statutory grant of immunity was not co-extensive with scope of her privilege against self-incrimination. *In re Grand Jury Proceedings* (1974, 491 F. 2d 42, 160 U.S. App. D.C. 249).

Miranda rights

Evidence that juvenile had five prior arrests and that, on the occasion of each arrest, he had been informed of his rights and testimony that he understood each individual right sustains finding that juvenile understood constitutional rights when they were read to him on his sixth arrest. *In the Matter of M. D. J.* (D.C. App. 1975, 346 A.2d 733).

Prosecution

Question of whether corporation counsel or United States attorney should conduct proceedings charging juvenile with act of delinquency was not properly certifiable since juvenile was not involved in criminal prosecution. *In the Matter of M.W.F.* (D.C. App. 1973, 312 A. 2d 302).

§ 16-2317. Hearings, findings; dismissal

NOTES TO DECISIONS

Delinquency adjudication

Adjudication of delinquency was warranted with respect to juvenile found carrying a pistol without a license. *In the Matter of E. F. B.* (D.C. App. 1974, 320 A. 2d 95).

Dependency determination under prior law

Where nine-year-old girl had previously been adjudged a "dependent child," in that her natural mother had, when the child was four days old, consented to commitment of the child to the Child Welfare Division of the Department of Public Welfare, the child continued in that status, and there is no necessity for the trial court to make a "neglected child" finding in determining whether custody of the child should go to the natural mother or the child's foster parents with whom the child had lived virtually all her life. *In the Matter of N. M. S.* (D.C. App. 1975, 347 A.2d 924).

Dismissal

Superior Court's use of the phrase "social reasons" alone did not fulfill the requirement of Juvenile Court Rule that the court, upon request of the corporation counsel, state why it was in the interests of justice and welfare of the child that delinquency petition be dismissed; moreover, effective appellate review would be impossible without a specific understanding of the reasoning applied by a trial court in reaching its conclusion that a juvenile petition should be dismissed without a fact finding hearing or an ultimate finding. *District of Columbia v. D.E.P.* (D.C. App. 1973, 311 A. 2d 831).

Where focus of counsel was never directed to precise issue of whether petitions alleging delinquency should be dismissed and proceedings terminated in interests of justice and juveniles' welfare, government must be given opportunity to address itself to trial court as whether such considerations justified dismissal of the petitions; thus orders of dismissal would be vacated and cases remanded for further proceedings. *In the Matter of R.L.R.* (D.C. App. 1973, 310 A. 2d 226).

Double jeopardy

Where Family Division's sua sponte declaration of mistrial in fact-finding hearing on petition charging juvenile with robbery was not dictated by manifest necessity, retrial of juvenile is barred by constitutional prohibition on double jeopardy. *District of Columbia v. I. P.* (D.C. App. 1975, 335 A. 2d 224).

Juvenile whose counsel had secured oral ruling of acquittal on charge of unauthorized use of a motor vehicle, had waived any potential double jeopardy claim when his trial counsel acquiesced in continuation of hearing and reopening of court when registered owner of vehicle appeared in courtroom. *In the Matter of J. A. H.* (D.C. App. 1974, 315 A. 2d 825).

Even if double jeopardy claim had not been waived by defense counsel's failure to object to reopening following oral granting of motion for judgment of acquittal, such reopening would not have placed juvenile in double jeopardy since oral ruling was not equivalent to a final, written judgment. *Id.*

For double jeopardy purposes, a trial or fact-finding hearing does not terminate until the actual entry of judgment; until then, the court is free to reconsider its prior rulings. *Id.*

Habeas corpus

Proper remedy for minors contending that, after their adjudication as "children in need of supervision" had been invalidated, they were improperly confined in facility in which they could not have been kept except for such adjudication, was appropriate action in District of Columbia Superior Court, not petition for writ of habeas corpus in federal district court. *I. Brown et al. v. J. Yeldell et al.* (1973, 487 F. 2d 1210, 159 U.S. App. D.C. 339).

Where petitioners could suffer no adverse collateral consequences due to their adjudication as "children in need of supervision" because it had been invalidated by District of Columbia Court of Appeals, and where two-year commitments ordered as result of that adjudication had elapsed, petitioners suffered no present harm cognizable by writ of habeas corpus. *Id.*

Record on appeal

Where no judgment had been included in record of delinquency proceeding and, instead, a handwritten entry had been made on case jacket stating, "Respondent found guilty," so that, without recourse to transcript, it was not possible to know precise findings and adjudication, rule providing that judgment "shall set forth the plea, the findings, the adjudication, and the disposition of order" was not complied with and case was subject to being remanded for compliance. *In the Matter of J. F. T.* (D.C. App. 1974, 320 A. 2d 322).

§ 16-2318. Order of adjudication noncriminal

NOTES TO DECISIONS

Appeal

Words "charged with a criminal offense" as used in section 23-104 providing that District of Columbia may appeal a suppression order entered before trial of a person charged with a criminal offense includes the term "delinquent act." *District of Columbia v. M. E. H.* (D.C. App. 1973, 312 A. 2d 561).

Prosecution

Question of whether corporation counsel or United States attorney should conduct proceedings charging juvenile with act of delinquency was not properly certifiable since juvenile was not involved in criminal prosecution. *In the Matter of M. W. F.* (D.C. App. 1973, 312 A. 2d 302).

§ 16-2320. Disposition of child who is neglected, delinquent, or in need of supervision

NOTES TO DECISIONS

Custody of dependent child

Where nine-year-old girl has previously been adjudged a "dependent child," the trial court has the authority under its continuing jurisdiction over the child to hear and determine the question of whether custody of the child should be given to the natural mother, who, when the child was four days old, consented to commitment of the child to the Child Welfare Division of the

Department of Public Welfare, or to the foster parents with whom the child had lived virtually all her life, and did not err in deciding that, subject to further order of the court, the child should remain with the foster parents. *In the Matter of N. M. S.* (D.C. App. 1975, 347 A.2d 924).

Trial court was correct in holding that the best interest of the child was the controlling factor in its decision as to whether to give custody of the child to her natural mother, who, when the child was four days old, consented to commitment of the child to the Child Welfare Division of the Department of Public Welfare, or to the foster parents with whom the child had lived virtually all her life, despite contention that court ignored the interest of the mother in its decision. *Id.*

§ 16-2327. Interlocutory appeals

NOTES TO DECISIONS

Burden of proof

Juvenile seeking summary reversal of order detaining him pending trial on charges of carnal knowledge and assault had burden of demonstrating that merits of claim so clearly warranted relief as to justify expedited action. *In the Matter of M. L. DeJ.* (D.C. App. 1973, 310 A. 2d 834).

Jurisdiction

Even though juvenile did not file notice of appeal from order denying application to reconsider order detaining him pending trial within two-day period provided for interlocutory appeals, appellate court had jurisdiction to review order by viewing it as final order, as to which such two-day limitation did not apply. *In the Matter of M. L. DeJ.* (D.C. App. 1973, 310 A. 2d 834).

Record on appeal

Where record on appeal from order detaining juvenile pending trial on charges of carnal knowledge and assault was insufficient to indicate factors relied upon by the court in answering order, case would be remanded to Superior Court with directions that judge file statements of reasons for order or reconsider same. *In the Matter of M. L. DeJ.* (D.C. App. 1973, 310 A. 2d 834).

§ 16-2328. Finality of judgments; appeals; transcripts

NOTES TO DECISIONS

Appeals—Mootness

Appeal from conviction in Family Division of the Superior Court of assault with intent to commit murder was not moot because defendant, subsequent to hearing, was convicted as an adult in another criminal case and had been discharged from jurisdiction of Family Division of Superior Court, where there was possibility of adverse collateral effects in later criminal proceedings resulting from use of juvenile records which included findings in assault prosecution. *In re S. W. B.* (D.C. App. 1974, 321 A. 2d 564).

Finality of hearings

Where, following hearing in February 1974, divorced husband's motion for reduction in alimony and child support was denied despite his loss of a major client, and order entered at that time was not appealed, such order stands as a binding determination that as of February the existing alimony and support award was not so onerous as to require modification, and thus in October 1974 hearing on new motion for reduction, husband is limited to change in circumstances since February, and

loss of said client cannot be placed in issue as showing change of circumstances. *C. C. Kieffer v. B. D. Kieffer* (D.C. App. 1975, 348 A.2d 887).

§ 16-2334. Sealing of records

NOTES TO DECISIONS

Construction

Court's authority to seal juvenile records is not founded on doctrine of *parens patriae*; Congress has limited authority of the court to seal juvenile records to situations where requirements of this section are satisfied. *In the Matter of R. T.* (D.C. App. 1975, 345 A.2d 156).

SUBCHAPTER II.—PATERNITY PROCEEDINGS

§ 16-2342. Time of bringing complaint

NOTES TO DECISIONS

Evidence—Sufficiency

In proceeding on petitions to establish paternity and to provide support for children who were 12 and 10 years of age, mother's testimony that defendant had given her money over the years as she needed it, that, on one specific date within one year from date of filing petitions, defendant had given her \$10 for visit to clinic (apparently occasioned by her cardiac condition) and that defendant knew that she never asked for money for herself was insufficient to support jurisdictional finding that defendant had contributed to support of children within one year prior to filing of petitions. *R. D. Lindsay v. District of Columbia ex rel. K. Lindsay et ano.* (D.C. App. 1972, 298 A. 2d 211).

Chapter 29.—PARTITION AND ASSIGNMENT OF DOWER

SUBCHAPTER I.—PARTITION GENERALLY

§ 16-2901. Parties; accounting by tenant in common

CROSS REFERENCE

Service by publication on nonresidents, absent defendants, and unknown heirs or devisees, see § 13-336.

Chapter 33.—QUIETING TITLE OBTAINED BY ADVERSE POSSESSION

§ 16-3301. Complaint; allegations; parties; service; decree

CROSS REFERENCE

Service by publication on nonresidents, absent defendants, and unknown heirs or devisees, see § 13-336.

Chapter 37.—REPLEVIN

§ 16-3701. Demand prior to action; costs

NOTES TO DECISIONS

Due process

Even if Supreme Court decision holding that certain replevin statutes violate due process were applicable to replevin statute involved in instant case, decision should have prospective effect only since rights have vested and actions have been taken between time of judgment in instant case and date of Supreme Court decision. *J. R. Roebuck et ano. v. Walker-Thomas Furniture Co., Inc.* (D.C. App. 1973, 310 A. 2d 845).

TITLE 17.—REVIEW

Title 17 was enacted by Pub. L. 88-241, Dec. 23, 1963, 77 Stat. 612

Chapter 3.—DISTRICT OF COLUMBIA COURT OF APPEALS

§ 17-304. Stay upon application for review of, or pending appeal from, administrative order or decision

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 17-305. Scope of review

NOTES TO DECISIONS

Evidence—Sufficiency

In proceeding on petitions to establish paternity and to provide support for children who were 12 and 10 years of age, mother's testimony that defendant had given her money over the years as she needed it, that, on one specific date within one year from date of filing petitions, defendant had given her \$10 for visit to clinic (apparently occasioned by her cardiac condition) and that defendant knew that she never asked for money for herself was insufficient to support jurisdictional finding that defendant had contributed to support of children within one year prior to filing of petitions. *R. D. Lindsay v. District of*

Columbia ex rel. K. Lindsay et ano. (D.C. App. 1972, 298 A. 2d 211).

Questions of fact

Even though police officer's specific testimony was that defendant had been looking "in the direction of the parked cars," inference drawn by trial court from totality of testimony adduced on motion to suppress is not plainly wrong or without evidence to support it and, accordingly, reviewing court would accept conclusion that defendant had been "looking into parked cars." *R. B. Sanders v. United States* (D.C. App. 1975, 339 A.2d 373).

Findings of fact by trial court are conclusive on appeal unless plainly wrong or without evidence to support them. *Lee Washington, Inc., etc. v. Washington Motor Truck Transportation Employees Health and Welfare Trust* (D.C. App. 1973, 310 A. 2d 604).

Scope of review

Where trial court treated motion to dismiss in effect as one for summary judgment and disposed of motion pursuant to rule that adverse party must set forth specific facts showing a genuine issue for trial, review by Court of Appeals is limited to determining whether trial court properly concluded that appellant failed to set forth specific facts demonstrating genuine issue for trial, and if that conclusion is proper, whether trial court correctly applied relevant statute to undisputed facts. *J. H. Hill v. District of Columbia* (D.C. App. 1975, 345 A. 2d 867).

PART III

DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

Part III, consisting of Titles 18 to 21, was enacted by Pub. L. 89-183, § 1, Sept. 14, 1965, 79 Stat. 685, effective Jan. 1, 1966

TITLE 18. WILLS AND PROBATE OF WILLS.
TITLE 19. DESCENT AND DISTRIBUTION.

TITLE 20. ADMINISTRATION OF DECEDENTS' ESTATES.
TITLE 21. FIDUCIARY RELATIONS AND THE MENTALLY ILL.

TITLE 18.—WILLS AND PROBATE OF WILLS

Title 18 was enacted by Pub. L. 89-183, Sept. 14, 1965, 79 Stat. 685

Chapter 1.—GENERAL PROVISIONS

§ 18-102. Capacity to make a will

NOTES TO DECISIONS

Capacity to make will

Trial court's determination that testator, who had sufficient clearness of mind and memory to know in general the nature and extent of his property and names and identity, of the objects of his bounty and his relation towards them, who corrected misspellings and page number changes on will and initialed such changes and who manifested concern for his estate and surviving spouse, had requisite testamentary capacity to execute a valid will was not erroneous. *J. W. Phelps v. R. S. Goldberg* (Md. Ct. App. 1974, 313 A. 2d 683).

There is a presumption in favor of testamentary capacity. *In re Estate of P. L. Weir* (1973, 475 F. 2d 988, 154 U.S. App. D.C. 404).

Fact that testator made "unnatural disposition" of his estate was not, in and of itself, indication of testamentary incapacity. *Id.*

Sound and disposing mind

Under this section, the "sound and disposing mind" necessary to make valid will means that the testator must have had, at the time of the execution of the instrument, sufficient mental capacity to dispose of his property or estate with judgment and understanding, considering the nature and character of the estate as well as the relative claims of different persons who would be the natural objects of his bounty. *In re Estate of P. L. Weir* (1973, 475 F. 2d 988, 154 U.S. App. D.C. 404).

Chapter 5.—PROBATE OF WILLS

§ 18-504. Probate; waiver of notice; proof of execution

NOTES TO DECISIONS

Burden of proof

Once proponent of will has met his initial burden and will has been admitted to probate and record, subsequent caveators must bear ultimate burden of proof as to execution. *C. C. Curtis v. M. B. Curtis* (1973, 481 F. 2d 549, 156 U.S. App. D.C. 374).

Where will had been admitted to probate, caveator who subsequently brought action challenging its validity on ground that signature was a forgery, had burden of proof as to that issue. *Id.*

Burden of going forward, in will contest originating after initial admission to probate, shifts once record of that admission is introduced. *Id.*

Caveatee is entitled to rely on record of probate as prima facie proof of due execution of will. *Id.*

Proof

Even in absence of a challenge or caveat, will may not be admitted to probate and record except on formal proof, presented by will's proponent, of proper execution. *C. C. Curtis v. M. B. Curtis* (1973, 481 F. 2d 549, 156 U.S. App. D.C. 374).

§ 18-507. Admission to probate

NOTES TO DECISIONS

Jurisdiction

Where life beneficiary under will is opposing attempted will probate on ground that testatrix had in fact died resident of and domiciled in Virginia and that Superior Court is therefore without jurisdiction to probate will, and allegedly most of testatrix' personal property was located in Virginia, such allegations placed jurisdiction of court in question and it is duty of Superior Court, of its own motion, to take notice of possible lack of jurisdiction, even if beneficiary has no standing to raise issue. *In re Estate of Dapolito* (D.C. App. 1975, 331 A.2d 327).

Where appellant is specific devisee and life beneficiary of testamentary trust under will, and as such has legally cognizable interest in taking her interest free from potentially successful collateral attacks in future such as lack of jurisdiction in court rendering judgment, appellant has standing, in proceeding brought to probate will, to contest admission of will to probate in Superior Court. *Id.*

§ 18-508. Caveat; will not to be probated while issues pending

NOTES TO DECISIONS

Admission to probate

District Court properly admitted documents to probate during a period in which no caveat was outstanding, that is, after first caveat had been dismissed with caveator's consent, and before second caveat was filed, where Court had available sworn statements of witnesses to will, and record showed that required notice had been given. *In re Estate of P. Himmelfarb* (D.C. App. 1975, 345 A.2d 477).

Burden of proof

Once proponent of will has met his initial burden and will has been admitted to probate and record, subsequent caveators must bear ultimate burden of proof as to execution. *C. C. Curtis v. M. B. Curtis* (1973, 481 F. 2d 549, 156 U.S. App. D.C. 374).

Where will had been admitted to probate, caveator who subsequently brought action challenging its validity on ground that signature was a forgery, had burden of proof as to that issue. *Id.*

Burden of going forward, in will contest originating after initial admission to probate, shifts once record of that admission is introduced. *Id.*

Caveatee is entitled to rely on record of probate as prima facie proof of due execution of will. *Id.*

§ 18-509. Caveat; time for filing

NOTES TO DECISIONS

Estoppel

Though it may have appeared to those who ultimately signed settlement agreement in first caveat proceeding that brother, by his inaction, was indicating a willingness to acquiesce in whatever steps his sister took with her caveat, where brother ceased to be inactive in time to give clear notice, several days in advance of settlement, that he would not acquiesce in compromise and would contest will, and signers, in proceeding with settlement, knowingly risked possibility that brother would bring another contest, as he had stated he would, doctrine of equitable estoppel does not operate to bar second caveat brought by brother. *In re Estate of P. Himmelfarb* (D.C. App. 1975, 345 A.2d 477).

Contestant's acceptance of distributions made to her pursuant to will, both prior to and subsequent to her

filing of the caveat, did not estop her where the amounts contestant received under the will were less than the amounts she would have received under either intestacy or the prior will, no other beneficiaries who had received distributions under the will would be affected by the challenge, and there was no showing of prejudice. *In re Estate of D. H. Burrough* (1973, 475 F. 2d 370, 154 U.S. App. D.C. 259; rev'g 318 F. Supp. 366).

There is requisite prejudice and estoppel to contest a will when a party makes a claim outside the will after taking property under a will to which he would not otherwise have been entitled. *Id.*

Fact that contestant, who had accepted distributions made to her pursuant to the will, both prior to and subsequent to her filing of the caveat, had not made proffer of the items received was not an absolute bar to contest. *Id.*

Res judicata

Consent order which was entered in proceedings on first caveat filed by child of decedent to contest probate of will does not, under principles of res judicata, operate to bar second caveat filed by another child to adjudicate issue of decedent's testamentary capacity, where second child not only failed to give his consent to compromise agreement upon which consent order was based, but put parties and court unequivocally on notice that he objected to compromise. *In re Estate of P. Himmelfarb* (D.C. App. 1975, 345 A.2d 477).

TITLE 19.—DESCENT AND DISTRIBUTION

Title 19 was enacted by Pub. L. 89-183, Sept. 14, 1965, 79 Stat. 693

Chapter 1.—RIGHTS OF SURVIVING SPOUSE AND CHILDREN

§ 19-113. Renunciation of devises and bequests; election; time limitations; renunciation or election by guardian or fiduciary; maximum rights; effect of no devise or bequest or if nothing passes under either; antenuptial or postnuptial agreements

NOTES TO DECISIONS

Inter vivos transfer

Factors controlling determination of whether inter vivos transfer was an improper circumvention of marital rights of the surviving spouse include "completeness" of the transfer, motive for the transfer, participation by transferee in alleged fraud on surviving spouse, time between transfer and death, and degree to which surviving spouse is left without interest in decedent's property or other means of support. *C. C. Windsor v. M. M. Leonard et al.* (1973, 475 F. 2d 932, 154 U.S. App. D.C. 348).

Net estate

Contention that revocable trust would be included in wife's estate for tax purposes was not proper basis for deciding whether it should be included in wife's "net estate" for purposes of determining husband's statutory share when he renounced his rights under wife's will; the proper basis was Maryland case law on marital property rights. *C. C. Windsor v. M. M. Leonard et al.* (1973, 475 F. 2d 932, 154 U.S. App. D.C. 348).

Though wife, in creating trust, reserved power of revocation, right to all income during her lifetime, right to withdraw from principal, and right to amend, trust was not an improper evasion of surviving husband's statutory rights when he renounced his rights under wife's will, and thus trust assets were properly excluded from wife's "net estate" in determining husband's statutory share, where there was no evidence of any unusual or fraudulent motive for the transaction, wife created trust at age of 54, some 18 months before she died, and husband was left with a 50% share in an estate exceeding \$100,000, in addition to personal holdings worth some \$140,000. *Id.*

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Chapter 3.—INTESTATES' ESTATES

§ 19-306. Children to share equally

NOTES TO DECISIONS

Illegitimate children

District of Columbia intestate succession statute (§ 19-316), whereby illegitimate children may inherit from their mother only, does not discriminate against illegitimate children in violation of due process. *E. L. Watts et al. v. J. G. Veneman et al.* (1971, 334 F. Supp. 482; aff'd 476 F. 2d 529, 155 U.S. App. D.C. 84).

§ 19-316. Share of illegitimate children; their issue; mother

NOTES TO DECISIONS

Constitutionality

This section is not unconstitutional by reason of fact that it does not permit illegitimate children to inherit as freely as legitimate children. *B. Malcolm v. C. W. Weinberger, Secretary etc.* (1973, 362 F. Supp. 1348).

This section, whereby illegitimate children may inherit from their mother only, does not discriminate against illegitimate children in violation of due process. *E. L. Watts et al. v. J. G. Veneman et al.* (1971, 334 F. Supp. 482; aff'd 476 F. 2d 529, 155 U.S. App. D.C. 84).

Inheritance from father

While natural father could designate child as sole beneficiary under will, he could not, absent adoption, make child his heir at law. *In the Matter of the Petition for Adoption: J.H.* (D.C. App. 1974, 313 A. 2d 874).

Chapter 7.—ESCHEAT

§ 19-701. Escheatment generally

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 20.—ADMINISTRATION OF DECEDENTS' ESTATES

Title 20 was enacted by Pub. L. 89-193, Sept. 14, 1965, 79 Stat. 702

Chapter 13.—CLAIMS OF CREDITORS

§ 20-1301. Debts to be proved

NOTES TO DECISIONS

Legally authenticated claim

A "legally authenticated claim" against an executor or administrator of estate is one which has been filed with the register of wills under oath stating basis of the decedent's debt and fact that it has not been paid or that part has been paid and part is still outstanding. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Purpose

Statutory framework of statutes dealing with administration of estates has dual purpose of giving executor notice of a claim against estate and thus protecting him from committing error of disbursing the assets of estate without first resolving validity of all claims and satisfying the debts, and of protection of the creditors of the estate. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

§ 20-1315. Retaining for claims

NOTES TO DECISIONS

Construction

This section requiring creditor who received written notice from executor to exhibit or pass claim within 30 days of notice if creditor is resident and within 90 days if creditor is a nonresident is an abbreviation of general statute of limitations and must be strictly construed. *D. Evans, Executor etc. v. Washington Hospital Center, Inc.* (D.C. App. 1972, 298 A. 2d 44).

Exhibition of claim

The purpose of exhibiting claim against estate to executor or administrator is to give executor or administrator an opportunity to make an informed decision as to whether it is a valid claim, and such exhibition has no bearing on running of statute of limitations, so that creditors who have duly docketed their claims against an estate are not required also to exhibit the claim to executor or administrator or to file suit in order to toll the running of the statute. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Notice to creditor

Executor's two letters to hospital requesting copy of decedent's medical records and names of treating doctors and inquiring about existence of hospital bill were insufficient to commence running of 30-day statute of limitations for asserting claim after receiving written notice from executor requesting either exhibition or passing of claim, and hospital which did not present claim for services rendered to decedent within three months was not barred from presenting claim after decedent's assets had been distributed. *D. Evans, Executor etc. v. Washington Hospital Center, Inc.* (D.C. App. 1972, 298 A. 2d 44).

§ 20-1318. Period during which creditors may file suit after claim is contested

NOTES TO DECISIONS

Contested claim

If executor does not act on claim duly docketed with register of wills, the claimant, not being advised to the contrary, has the right to expect that the claim against estate will be paid when executor is in a position to do

so. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Exhibition of claim

The purpose of exhibiting claim against estate to executor or administrator is to give executor or administrator an opportunity to make an informed decision as to whether it is a valid claim, and such exhibition has no bearing on running of statute of limitations, so that creditors who have duly docketed their claims against an estate are not required also to exhibit the claim to executor or administrator or to file suit in order to toll the running of the statute. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Tolling limitations

The docketing of a duly authenticated claim against a decedent's estate in office of register of wills tolls the general three-year statute of limitations and brings the claim within special statute of limitations protecting claimant until three months after claim is rejected or disputed by the executor or administrator. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

§ 20-1320. Notice to creditors to file claims

NOTES TO DECISIONS

Knowledge of claim

Even though executor did not know exact amount of hospital's claim for services rendered to decedent, where executor actually knew of claim and knew that decedent's debts consisted principally of bill due hospital and funeral expenses, statute requiring that claims of which executor has no knowledge be presented within three months after executor's publication of notice to creditors did not bar hospital's claim brought after decedent's assets had been distributed. *D. Evans, Executor etc. v. Washington Hospital Center, Inc.* (D.C. App. 1972, 298 A. 2d 44).

Purpose

Purpose of this section requiring that claims of which executor has no knowledge be presented within three months after executor's publication of notice to creditors is to enable fiduciary to ascertain extent of estate's indebtedness so he may know what must be paid before making distribution and to protect him when unknown claims are not timely presented. *D. Evans, Executor etc. v. Washington Hospital Center, Inc.* (D.C. App. 1972, 298 A. 2d 44).

§ 20-1323. Docket of claims

NOTES TO DECISIONS

Effect of docketing

The docketing of a duly authenticated claim against a decedent's estate in office of register of wills tolls the general three-year statute of limitations and brings the claim within special statute of limitations protecting claimant until three months after claim is rejected or disputed by the executor or administrator. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Once a duly authenticated claim against estate has been timely docketed in office of register of wills, an executor cannot close the estate without recognizing the existence of the claim. *Id.*

If executor does not act on claim duly docketed with register of wills, the claimant, not being advised to the contrary, has the right to expect that the claim against

estate will be paid when executor is in a position to do so. *Id.*

Exhibition of claim

The purpose of exhibiting claim against estate to executor or administrator is to give executor or administrator an opportunity to make an informed decision as to whether it is a valid claim, and such exhibition has no bearing on running of statute of limitations, so that creditors who have duly docketed their claims against an estate are not required also to exhibit the claim to executor or administrator or to file suit in order to toll the running of the statute. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

§ 20-1324. Filed claim no evidence of correctness if disputed; filing as tolling limitations

NOTES TO DECISIONS

Purpose

Purpose of statute declaring that docketing of claim against estate does not afford evidence as to justice or correctness of a debt when it is controverted by an executor or administrator and does not take a debt out of operation of defense of limitations was to make it clear that mere docketing of a claim would not necessarily establish its validity or deprive estate of any defense of limitations and would not operate to reinstate claim already barred by running of statute of limitations. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

Tolling limitations

The docketing of a duly authenticated claim against a decedent's estate in office of register of wills tolls the general three-year statute of limitations and brings the claim within special statute of limitations protecting claimant until three months after claim is rejected or disputed by the executor or administrator. *American Security and Trust Company v. J. E. Bindeman, Executor etc., et ano.* (D.C. App. 1973, 303 A. 2d 188).

§ 20-1326. No claim to be noticed unless legally authenticated

NOTES TO DECISIONS

Legally authenticated claim

A "legally authenticated claim" against an executor or administrator of estate is one which has been filed with the register of wills under oath stating basis of the decedent's debt and fact that it has not been paid or that part has been paid and part is still outstanding. *American*

Security and Trust Company v. J. E. Bindeman, Executor etc., et ano. (D.C. App. 1973, 303 A. 2d 188).

Chapter 17.—ACCOUNTS

§ 20-1705. Disbursements and allowances

NOTES TO DECISIONS

Compensation of executor or administrator

Attorney, administrator of decedent's estate, is entitled to recover in quantum meruit from estate of heir the reasonable value of legal services rendered in connection with sale of inherited property, where conservator gave at least tacit approval to sale and acquiesced in attorney's efforts, court had earlier knowledge of transaction, and services benefited estate, although record fell short of establishing express oral agreement for services and court had not given prior approval to expenditure. *In re Conservatorship for C. L. Rich* (D.C. App. 1975, 337 A.2d 764).

As against assertion that there was no assurance that claim represented all compensation for services on probate assets which executors might ultimately claim and that compensation which might be later sought from trust assets might in fact represent compensation for services rendered to probate assets, probate court properly awarded compensation and expenses to executors and attorneys in connection with probate assets even though assets of estate would pour over into inter vivos trust and trust provided that trustee could make payments from principal of trust for administration expenses in connection with estate, since any further compensation derived from trust assets would be subject to scrutiny of out-of-state court with jurisdiction to review trust administration. *In re Estate of W. L. Clark* (1973, 495 F. 2d 102, 161 U.S. App. D.C. 276).

Chapter 21.—ADMINISTRATION OF SMALL ESTATES

§ 20-2101. Petition for distribution of small estate; order

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-2103, 20-2105, 47-1567g.

§ 20-2102. Waiver of administration; notice to creditors; final order

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20-2103, 20-2105, 47-1567g.

TITLE 21.—FIDUCIARY RELATIONS AND THE MENTALLY ILL

Title 21 was enacted by Pub. L. 89-183, Sept. 14, 1965, 79 Stat. 736

Chapter 1.—GUARDIANSHIP OF INFANTS

SUBCHAPTER I.—APPOINTMENT OF GUARDIAN; BOND

§ 21-114. Bond from parents of child entitled to property

CROSS REFERENCE

Undertaking in lieu of fiduciary's bond, see § 16-601.

§ 21-115. Bond of guardian of estate

CROSS REFERENCE

Undertaking in lieu of fiduciary's bond, see § 16-601.

Chapter 5.—HOSPITALIZATION OF THE MENTALLY ILL

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2-2222, 11-501, 11-921, 11-1101, 11-2601, 16-2315, 16-2321, 24-528.

SUBCHAPTER I.—DEFINITIONS; COMMISSION ON MENTAL HEALTH

§ 21-501. Definitions

CROSS REFERENCE

Representation of indigents, see §§ 2-2222, 11-2601.

§ 21-502. Commission on Mental Health; composition; appointment and terms of members; organization; chairman; salaries

* * * * *

(e) The salaries of the members of the Commission and its employees shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended. The alternate Chairman shall be paid on a per diem basis at the same rate of compensation as fixed for the permanent Chairman.

* * * * *

REFERENCE IN TEXT

The Classification Act of 1949, as amended, referred to in subsec. (e), was repealed by Act Sept. 6, 1966, Pub. L. 89-554, § 8(a), 80 Stat. 632, section 1 of which enacted title 5, U.S.C., into law, and is now covered by chapter 51 and subchapter III of chapter 53 of title 5, U.S.C.

CODIFICATION

Subsec. (e) is set out in this supplement to correct editorial error appearing in the main edition.

SUBCHAPTER III.—EMERGENCY HOSPITALIZATION

§ 21-521. Detention of persons believed to be mentally ill; transportation and application to hospital

NOTES TO DECISIONS

Constitutionality

Fact that Congress has legislated two statutes for detaining mentally ill persons, one applicable to the metropolitan District of Columbia area containing federal reservations and one applicable to the District of Columbia, does not present a constitutionally suspect situation, inasmuch as the District of Columbia is neither a state nor territory, but a federal enclave, housing the federal gov-

ernment, and Congress may legislate a detention statute applicable only within the District. *E. Medynski v. L. S. Margoits* (1975, 389 F.Supp. 743).

§ 21-522. Examination and admission to hospital; notice

NOTES TO DECISIONS

Mootness

Case in which petitioner challenged validity of his prior emergency confinement as a person mentally ill and dangerous to himself or others presented sufficient adversariness to avoid mootness in constitutional sense, although hospital had initiated a judicial proceedings for long-term hospitalization and had later unconditionally released petitioner. *In re J. Curry* (1972, 470 F. 2d 368, 152 U.S. App. D.C. 220).

Voluntary treatment

Where petitioner voluntarily presented himself at university hospital and requested treatment, doctor at this hospital advised petitioner that he could not be admitted there and suggested that he file application for treatment at a public mental hospital, which petitioner was unwilling to do, and doctor then executed an application for emergency hospitalization and sent petitioner in an ambulance to mental hospital which admitted petitioner as involuntary emergency patient, and there was nothing to indicate that petitioner resisted treatment at mental hospital, petitioner's detention as an emergency's involuntary patient was null and void. *In re J. Curry* (1972, 470 F. 2d 368, 152 U.S. App. D.C. 220).

§ 21-523. Court order requirement for hospital detention beyond 48 hours; maximum period for observation

NOTES TO DECISIONS

Mootness

Case in which petitioner challenged validity of his prior emergency confinement as a person mentally ill and dangerous to himself or others presented sufficient adversariness to avoid mootness in constitutional sense, although hospital had initiated a judicial proceedings for long-term hospitalization and had later unconditionally released petitioner. *In re J. Curry* (1972, 470 F. 2d 368, 152 U.S. App. D.C. 220).

Voluntary treatment

Where petitioner voluntarily presented himself at university hospital and requested treatment, doctor at this hospital advised petitioner that he could not be admitted there and suggested that he file application for treatment at public mental hospital, which petitioner was unwilling to do, and doctor then executed an application for emergency hospitalization and sent petitioner in an ambulance to mental hospital which admitted petitioner as involuntary emergency patient, and there was nothing to indicate that petitioner resisted treatment at mental hospital, petitioner's detention as an emergency, involuntary patient was null and void. *In re J. Curry* (1972, 470 F. 2d 368, 152 U.S. App. D.C. 220).

§ 21-528. Detention of person pending judicial proceedings

NOTES TO DECISIONS

Mootness

Case in which petitioner challenged validity of his prior emergency confinement as a person mentally ill and dangerous to himself or others presented sufficient adversariness to avoid mootness in constitutional sense, although hospital had initiated a judicial proceedings for long-term hospitalization and had later unconditionally released petitioner. *In re J. Curry* (1972, 470 F. 2d 368, 152 U.S. App. D.C. 220).

Voluntary treatment

Where petitioner voluntarily presented himself at university hospital and requested treatment, doctor at this hospital advised petitioner that he could not be admitted there and suggested that he file application for treatment at a public mental hospital, which petitioner was unwilling to do, and doctor then executed an application for emergency hospitalization and sent petitioner in an ambulance to mental hospital which admitted petitioner as involuntary emergency patient, and there was nothing to indicate that petitioner resisted treatment at mental hospital, petitioner's detention as an emergency, involuntary patient was null and void. *In re J. Curry* (1972, 470 F. 2d 368, 152 U.S. App. D.C. 220).

SUBCHAPTER IV.—HOSPITALIZATION UNDER COURT ORDER**§ 21-545. Hearing and determination by court or jury; order; witnesses; jurors****NOTES TO DECISIONS****Appeal and error**

Appeal from commitment order, based on claim that patient was deprived of due process of law because jury did not determine beyond a reasonable doubt that he was mentally ill and consequently dangerous, was not moot because of patient's discharge, where, in light of patient's fixed delusions and testimony indicating likelihood of their persistence, prospect of patient again being subjected to commitment proceedings was not remote, and where collateral consequences of being adjudged mentally ill remained to plague patient. *In re J. Ballay* (1973, 482 F. 2d 648, 157 U.S. App. D.C. 59).

Burden of proof

Where burden of proof on issue of defendant's mental condition was placed on defendant at release hearing and defendant's request for jury trial was denied, defendant's commitment to mental institution following his acquittal by reason of insanity was not valid under the civil commitment statute of the District of Columbia. *United States v. B. L. Wright* (1975, 511 F.2d 1311, 167 U.S. App. D.C. 309).

In an involuntary civil commitment trial, due process required proof beyond a reasonable doubt that respondent was mentally ill and, because of the illness, was likely to injure herself or other persons if allowed to remain at liberty. *In the Matter of S. Hodges* (D. C. App. 1974, 325 A.2d 605).

Proof of mental illness and dangerousness in involuntary civil commitment proceedings must be beyond a reasonable doubt rather than by preponderance of evidence. *In re J. Ballay* (1973, 482 F. 2d 648, 157 U.S. App. D.C. 59).

There is justification for preponderance of proof standard for commitment of the insanity-acquitted even if higher standard is required prior to civil commitment for propensity and even though there is no justification for denying the insanity-acquitted the right to jury trial that is recognized for those involved in civil commitment proceedings. *United States v. J. J. Brown* (1973, 478 F. 2d 606, 155 U.S. App. D.C. 402).

Where insanity-acquitted individual has been in detention for considerable period of time, his continued detention vel non should be governed by same standard of burden of proof applied to civil commitments; extent of period calls for sound discretion, considering nature of crime, nature of treatment, and response of person, and generally will not exceed five years and should never exceed maximum sentence for offense, less mandatory release time. *Id.*

Defendant acquitted by reason of insanity could be committed on determination of mental illness by preponderance of evidence, despite contention that due process required reasonable doubt standard in involuntary civil commitment proceeding and that equal protection required same standard for the insanity-acquitted. *Id.*

Danger to community

Jury hearing psychiatrist's testimony of dangerousness of person sought to be committed following acquittal on criminal charge due to finding of insanity should be in-

formed of the various components of such term, to what extent it reflects a predicting of behavior, and whether it is prediction of an occurrence of a kind of behavior that, however deviant, might be considered by the jury not to be dangerous. *United States v. W. E. Ashe* (1973, 478 F. 2d 661, 155 U.S. App. D.C. 457).

In proceedings for commitment as dangerous due to mental illness of a person who has been found not guilty of an offense by reason of insanity, instruction as to role of expert witnesses should be sent to the experts in advance of hearing and should be read at least once to the jury. *Id.*

Jury trial

Where burden of proof on issue of defendant's mental condition was placed on defendant at release hearing and defendant's request for jury trial was denied, defendant's commitment to mental institution following his acquittal by reason of insanity was not valid under the civil commitment statute of the District of Columbia. *United States v. B. L. Wright* (1975, 511 F.2d 1311, 167 U.S. App. D.C. 309).

Vacation of commitment under prior law

Person whose two commitments to mental hospital were procedurally defective is entitled to declaration of illegality of such commitments and to vacation of respective commitment orders so that he can explain to potential employers where he was during years in question without jeopardizing his chances of gaining employment. *In the Matter of R. A. Brown* (1975, 68 F.R.D. 172).

— Jurisdiction

Where proceeding by person previously committed to mental hospital is part of two commitment proceedings begun in District Court sometime previously, Court has jurisdiction over later petition to have commitments declared illegal and vacated despite fact that District of Columbia Court Reorganization Act of 1970 vested exclusive jurisdiction over mental health matters in Superior Court. *In the Matter of R. A. Brown* (1975, 68 F.R.D. 172).

SUBCHAPTER V.—RIGHT TO COMMUNICATION; EXERCISE OF OTHER RIGHTS**§ 21-564. Exercise of property and other rights; notice of inability; persons hospitalized prior to September 15, 1964****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER VI.—MISCELLANEOUS PROVISIONS**§ 21-581. Proceedings instituted by Commissioner of the District of Columbia****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 21-586. Financial responsibility for care of hospitalized persons; judicial enforcement**NOTES TO DECISIONS****Jurisdiction**

Where District Court ordered wife committed to mental hospital, jurisdiction over any claim for contribution to her support remained in District Court while she was confined in hospital, but after she was released and placed in foster home, claim for contribution to her support is to

be brought in Superior Court. *G. D. Randolph, Jr. v. District of Columbia* (D.C. App. 1975, 333 A.2d 380).

§ 21-592. Return to hospital of an escaped mentally ill person

CROSS REFERENCE

Rewards for apprehension from fugitives from welfare institutions, see § 24-426.

Chapter 9.—MENTALLY ILL PERSONS FOUND IN CERTAIN FEDERAL RESERVATIONS

§ 21-902. Commitments by special commissioners of certain district courts

NOTES TO DECISIONS

Constitutionality

Provisions of this chapter governing involuntary detention and commitment of mentally ill persons on federal reservations in metropolitan District of Columbia are not so inconsistent with provisions of chapter 5 of this title governing commitments in District of Columbia as to deprive an individual of due process and equal protection when committed pursuant to authority of provisions governing federal reservations. *E. Medynski v. L. S. Margolis* (1975, 389 F.Supp. 743).

Mootness

Action wherein plaintiff challenged constitutionality of procedure of this chapter for involuntary detention and commitment of mentally ill persons in metropolitan District of Columbia area was not moot by reason of plaintiff's discharge from hospital during pendency of litigation where defendant could again be detained pursuant to procedure and, thus, be forced to again advance her allegations, and collateral consequences of being adjudged mentally ill remained to plague plaintiff. *E. Medynski v. L. S. Margolis* (1975, 389 F.Supp. 743).

§ 21-903. Apprehension by certain officials of persons believed to be mentally ill; proceedings

NOTES TO DECISIONS

Constitutionality

Fact that Congress has legislated two statutes for detaining mentally ill persons, one applicable to the metropolitan District of Columbia area containing federal reservations and one applicable to the District of Columbia, does not present a constitutionally suspect situation, inasmuch as the District of Columbia is neither a state nor territory, but a federal enclave, housing the federal government, and Congress may legislate a detention statute applicable only within the District. *E. Medynski v. L. S. Margolis* (1975, 389 F.Supp. 743).

Provisions of this chapter governing involuntary detention and commitment of mentally ill persons on federal reservations in metropolitan District of Columbia are not so inconsistent with provisions of chapter 5 of this title governing commitments in District of Columbia as to deprive an individual of due process and equal protection when committed pursuant to authority of provisions governing federal reservations. *Id.*

Mootness

Action wherein plaintiff challenged constitutionality of procedure of this chapter for involuntary detention and commitment of mentally ill persons in metropolitan District of Columbia area was not moot by reason of plaintiff's discharge from hospital during pendency of litigation where defendant could again be detained pursuant to procedure and, thus, be forced to again advance her allegations, and collateral consequences of being adjudged mentally ill remained to plague plaintiff. *E. Medynski v. L. S. Margolis* (1975, 389 F.Supp. 743).

Chapter 11.—COMMITMENT AND MAINTENANCE OF SUBSTANTIALLY RETARDED PERSONS

§ 21-1102. Persons received in Forest Haven; age limit

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 21-1111. Proceedings to charge relatives legally responsible for maintenance of public patient; collection of maintenance payments; enforcement of order; liability of decedent's estate

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 21-1120. Paroles; conditions; expense; discretion of superintendent; violation; return

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Rewards for apprehension of fugitives from welfare institutions, see § 24-426.

Chapter 15.—CONSERVATORS

§ 21-1501. Appointment of conservators

NOTES TO DECISIONS

Construction

This section requires a showing that the adult in question, by reason of mental weakness not amounting to unsoundness of mind, is unable to care for his property, and inability must be a present one, as it is insufficient to show a prior mental condition or that there may be, at some uncertain time in the future, an inability to handle property. *In the Matter of W. C. Kloman, Jr.* (D.C. App. 1974, 315 A. 2d 830).

Evidence—Sufficiency

In view of other evidence, fact that person had previously been committed to hospital for 10 months on two occasions and had at one point been found not guilty by reason of insanity of assaulting a police officer and had been diagnosed as a paranoid schizophrenic was insufficient to support finding that person was unable to handle his own funds and that a conservator should be appointed. *In the Matter of W. C. Kloman, Jr.* (D.C. App. 1974, 315 A. 2d 830).

§ 21-1503. Bond; powers and duties

NOTES TO DECISIONS

Accounts—Disbursement

Where ward suffered stroke subsequent to court order for disbursement of estate's funds by conservator, fact that court order might have been based on projected budget does not require substitute conservator to expend funds in exact, or even approximate, proportion to amounts set forth in estimated budget, for large degree of flexibility, autonomy, and discretion is necessary in running household with changing needs. *S. Rosendorf et al. v. J. C. Toomey, Conservator* (D.C. App. 1975, 349 A.2d 694).

Where ward of estate suffered stroke, and ward's wife became responsible for payment of bills, salaries, and other expenditures of household, it is not improper for substitute conservator to designate ward's wife as payee of checks for ward's living expenses. *Id.*

— Time for objections

Where substitute conservator of estate submitted accounts and reports of his disbursements to ward from 1966 to 1970, action by children of ward brought in 1972 which objected to such disbursements was not timely filed and is precluded, notwithstanding that such delay was

attributable to heirs' successful challenge to testamentary instruments executed by ward *S. Rosendorf et al. v. J. C. Toomey, Conservator* (D.C. App. 1975, 349 A.2d 694).

Costs

Where children of ward who challenged substitute conservator's disbursements from estate made no showing of wrongdoing by substitute conservator, trial court's prospective allowance to conservator of attorney's fees in regard to appeal, subject to future approval by trial court as to amount, is reasoned and proper exercise of trial court's discretion. *S. Rosendorf et al. v. J. C. Toomey, Conservator* (D.C. App. 1975, 349 A.2d 694).

Reasonable compensation

Under evidence that commission paid to substitute conservator of estate was based on character of services rendered, amount of time spent, and size of estate administered, and that commission did not exceed statutory limit of 5% of disbursements, trial court did not abuse its discretion in approving payment of such commission to conservator. *S. Rosendorf et al. v. J. C. Toomey, Conservator* (D.C. App. 1975, 349 A.2d 694).

§ 21-1505. Appointment of temporary conservator

NOTES TO DECISIONS

Costs and fees

Where physician initiated proceedings for appointment of conservator on behalf of one of his patients and, in petitioning court for reimbursement of his costs and attorney's fees resulting from temporary conservatorship, was called upon to defend his actions in having initiated the proceedings, which resulted in discharge of temporary

conservator, the context in which physician incurred the expenses and costs in conservator proceedings did not amount to a "suit against the insured," and did not require physician to defend against a claim alleging "injury, sickness, disease" caused by "malpractice, error or mistake" within malpractice policy, and physician was not entitled to recover under policy for his costs and fees of defense of his actions. *W. M. Oler v. Liberty Mutual Insurance Company* (D.C. App. 1972, 297 A. 2d 333).

Medical services

Proceedings initiated by physician for appointment of conservator on behalf of patient, who physician alleged needed to have assets preserved so that he would not be deprived of treatment he needed, did not constitute the rendering of professional medical services within purview of malpractice policy. *W. M. Oler v. Liberty Mutual Insurance Company* (D.C. App. 1972, 297 A. 2d 333).

Chapter 17.—UNIFORM FIDUCIARIES ACT

§ 21-1706. Deposit in name of fiduciary as such

NOTES TO DECISIONS

Applicability

Uniform Fiduciaries Act applies only to liability for check transactions, so that maintenance of excessive deposits by defendant financial institutions, in action challenging various aspects of charitable hospital's fiscal management, would not fall within any of the Act's provisions. *D. M. Stern et al. v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries et al.* (1974, 381 F. Supp. 1003).

PART IV

CRIMINAL LAW AND PROCEDURE

TITLE 22. CRIMINAL OFFENSES.
TITLE 23. CRIMINAL PROCEDURE.

TITLE 24. PRISONERS AND THEIR TREATMENT.

TITLE 22.—CRIMINAL OFFENSES

Chapter 1.—GENERAL PROVISIONS

§ 22-103. Attempts to commit crime.

NOTES TO DECISIONS

Joinder

Joinder of counts concerning second-degree burglary, grand larceny, and attempted burglary, was not improper. *L. P. Coleman v. United States* (D.C. App. 1972, 298 A. 2d 40; cert. denied 93 S. Ct. 3070, 413 U.S. 921).

Miranda rights

Defendant's incriminating statement, which was made one or two seconds after his apprehension by single police officer on roof of burglarized building in response to officer's inquiry as to what defendant was doing on roof, and which was given while officer was handcuffing defendant prior to any Miranda warnings, is admissible in defendant's subsequent prosecution for attempted burglary. *R. C. Owens v. United States* (D.C. App. 1975, 340 A.2d 821).

Receiving stolen property

Defendant, who received a television set, which in fact had not been stolen, after having been advised that the set was a stolen set, did not commit crime of attempted receiving stolen property, since an unsuccessful attempt to do that which is not a crime cannot be held to be an attempt to commit crime specified. *United States v. F. Hair* (1973, 356 F. Supp. 339).

Severance

Refusal to sever counts, in prosecution for second-degree burglary, grand larceny, and attempted burglary, was not an abuse of discretion where, inter alia, if there had been separate trials on each of the counts there would have been a substantial overlap of the evidence. *L. P. Coleman v. United States* (D.C. App. 1972, 298 A. 2d 40; cert. denied 93 S. Ct. 3070, 413 U.S. 921).

§ 22-104. Second conviction.

CROSS REFERENCE

Proceedings to establish previous convictions, see § 23-111.

NOTES TO DECISIONS

Peremptory challenges

Defendant who was charged with petit larceny, a misdemeanor for which maximum punishment was one year, was entitled to only the three peremptory charges available to defendant charged with such an offense notwithstanding fact that Government had filed notice that, if convicted, defendant would be subjected to additional penalties of the third offender statute. *C. E. Tatum v. United States* (D.C. App. 1974, 330 A. 2d 522).

Procedure

Trial judge's failure to inquire of defendant whether he affirmed or denied previous convictions contained in government's information invalidates sentence for carrying a pistol without a license imposed under the recidivist sentencing procedure. *L. Irby v. United States* (D.C. App. 1975, 342 A.2d 33).

Purpose

Purpose of repeat offender statute is to provide new tools and sentencing alternatives to the trial judge to protect

society and to secure certain additional safeguards, due process rights, and rehabilitation of the convicted offender. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

Sentence

A sentence under the recidivist statute is not a part of the offense itself; it is the possible punishment for the latter which determines whether the prosecution must be by indictment; recidivist statute comes into play after the trial and after accused has been found guilty and proceedings thereunder do not involve inquiry into guilt or innocence. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

§ 22-104a. Punishment of persons convicted of a felony with a prior record of at least two felony convictions—Definitions—Effect of convictions pardoned on the ground of innocence.

CROSS REFERENCE

Proceedings to establish previous convictions, see § 23-111.

NOTES TO DECISIONS

Prior convictions

Convictions arising from separate indictments handed down on same date cannot be relied on to enhance punishment as third offender. *D. L. Washington v. United States* (D.C. App. 1975, 343 A.2d 560).

Procedure

Trial judge's failure to inquire of defendant whether he affirmed or denied previous convictions contained in government's information invalidates sentence for carrying a pistol without a license imposed under the recidivist sentencing procedure. *L. Irby v. United States* (D.C. App. 1975, 342 A.2d 33).

An enhanced sentence could not be imposed upon defendant, found guilty of grand larceny, where the information as to the prior felony convictions was not filed with clerk of court prior to trial as required by § 23-111. *J. A. Bond v. United States* (D.C. App. 1973, 310 A. 2d 221).

Purpose

Purpose of repeat offender statute is to provide new tools and sentencing alternatives to the trial judge to protect society and to secure certain additional safeguards, due process rights, and rehabilitation of the convicted offender. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

§ 22-105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

NOTES TO DECISIONS

Acquittal of principal

Fact that a jury made no finding as to guilt on charge of armed robbery of codefendant who eyewitness testified took money does not preclude defendant's conviction of armed robbery as an aider and abettor. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A.2d 746).

Where codefendant was tried on theory he aided and abetted defendant, if the principal defendant was acquitted then codefendant should also have been found not

guilty, and the error which damaged principal defendant's defense was also prejudicial to codefendant. *United States v. C. L. Smith* (1973, 478 F. 2d 976, 156 U.S. App. D.C. 66).

Aid and abet

Under statute authorizing charging of aiders and abettors as principals, particular defendants who distributed allegedly obscene motion picture film could be convicted of knowingly presenting the film in the District of Columbia where such defendants supplied film to exhibitor therein in return for share of proceeds from the exhibition. *United States v. Sherpix, Inc.* (1975, 512 F.2d 1361, 168 U.S. App. D.C. 121).

Assistance of counsel

Defense counsel should be guided by American Bar Association Standards, should, inter alia, confer with client without delay and as often as necessary to elicit matters of defense or ascertain potential defenses, discuss potential strategies and tactical choices with client, promptly advise him of his rights and take actions necessary to preserve them, conduct investigations to determine matters of defense that can be developed, interview government witnesses if accessible, attempt to secure information in possession of prosecution and do adequate research. *United States v. W. DeCoster, Jr.* (1973, 487 F. 2d 1197, 159 U.S. App. D.C. 326).

Claim of ineffective assistance of counsel should first be presented to district court in motion for a new trial and in such proceeding, evidence dehors the record may be submitted by affidavit, and when necessary district judge may order a hearing or otherwise allow counsel to respond; if trial court is willing to grant motion, the Court of Appeals will remand and if motion is denied, appeal therefrom will be considered with appeal from conviction and sentence. *Id.*

Charged as principal

Defendant may be charged and convicted as principal even though proof is that he was only aider and abettor, but there must be evidence that someone other than defendant was principal whom defendant aided and abetted. *J. D. Payton, Jr. v. United States* (D.C. App. 1973, 305 A. 2d 512).

Elements of offense

To support conviction of aiding and abetting a felony-murder, the homicide must have been committed in the course of the felony and in furtherance of the common purpose to commit the felony, rather than merely coincidental with it. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

Essential elements of aiding and abetting are: (1) that an offense was committed by someone, (2) that the accused assisted or participated in its commission and (3) that he did so with guilty knowledge; hallmark of an aider and abettor is that the accused in some sort associated himself with the venture, participated in it as in something that he wished to bring about and sought by his action to make it succeed. *E. Blango v. United States* (D.C. App. 1975, 335 A.2d 230).

Aiding and abetting a crime is established if the accused associated himself with the venture, participated in it as in something that he wished to bring about and sought by his action to make it succeed. *R. F. Creek v. United States* (D.C. App. 1974, 324 A. 2d 688).

In order to obtain a conviction for aiding and abetting the commission of a crime, the government must show that the defendant in some way associated himself with the criminal venture, that he participated in it as in something he wished to bring about and that he sought by his action to make it succeed. *G. G. Quarles v. United States* (D.C. App. 1973, 308 A. 2d 773).

Evidence—Sufficiency

In murder prosecution against two defendants one of whom shot the victim, evidence including showing of continuous association of codefendant with defendant who shot the victim, their furtive consultation immediately preceding the murder and codefendant's holding of bags of valuables that other defendant carried moments earlier and standing close by while the defendant fought with and shot the victim sustained conviction of second-

degree murder. *United States v. J. Clayborne* (1974, 509 F.2d 473, 166 U.S. App. D.C. 140).

Evidence was not sufficient to support conviction of petit larceny as an aider and abettor by pushing victim at the very time that pickpocket pushed the victim from the rear and removed victim's wallet from his pocket. *G. G. Quarles v. United States* (D.C. App. 1973, 308 A. 2d 773).

Instructions

Where soon after retiring jury requested instruction on whether aiding and abetting instruction applied to armed robbery count of indictment as well as assault charge, trial court's charging jury that aiding and abetting instruction was applicable to both counts in absence of defendant was, at most, harmless error. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

Minor variation from locally suggested instructions on aiding and abetting was insignificant. *United States v. J. Clayborne* (1974, 509 F.2d 473, 166 U.S. App. D.C. 140).

Jury question

In murder prosecution against two defendants one of whom shot the victim, whether the codefendant had aided and abetted the offense was for jury under the evidence. *United States v. J. Clayborne* (1974, 509 F.2d 473, 166 U.S. App. D.C. 140).

Lesser included offense

An aider and abettor of an armed robbery is not guilty of a lesser included offense but is a principal to the robbery. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A. 2d 587).

Presence at commission

Presence at scene of crime, while insufficient without more to prove criminal complicity, will constitute aiding and abetting if it designedly encourages the perpetrator, facilitates the unlawful deed or stimulates others to render assistance to criminal act. *R. F. Creek v. United States* (D.C. App. 1974, 324 A. 2d 688).

Evidence sustained robbery conviction of defendant who was one of robber's companions watched commission of robbery, and ran from scene of crime with robber and other companion. *Id.*

Proof of an accused's presence at the scene of a crime alone cannot support a conviction of aiding and abetting the commission of a crime. *G. G. Quarles v. United States* (D.C. App. 1973, 308 A. 2d 773).

Proof of presence at scene of crime plus conduct which designedly encourages or facilitates a crime will support an inference of guilty participation in the crime as an aider and abettor. *Id.*

Prosecutor's comments

Prosecutor's closing and rebuttal arguments which referred to defenses of insanity interposed by famous defendants in other cases and to actions of Hitler and Napoleon were improper and were so highly prejudicial as to require reversal. *United States v. W. E. Hawkins* (1973, 480 F. 2d 1151, 156 U.S. App. D.C. 259).

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and was convicted of second-degree murder, would also be nullified. *Id.*

§ 22-105a. Punishment of persons convicted of conspiracies to commit crimes—Proof—Conspiracies to commit crimes within or outside of the District.

NOTES TO DECISIONS

Presentence hearing

Plea of guilty to conspiracy to commit abortion did not insulate accused from inquiry in presentence hearing as to extent of his conduct in abortion, notwithstanding contention that determination of guilt of a different offense resulted. *G. L. Warren v. United States* (D.C. App. 1973, 310 A. 2d 228).

§ 22-108. Offenses committed beyond District of Columbia.

CROSS REFERENCES

Receiving embezzled goods, see § 22-1204.

Receiving stolen goods, see §§ 22-2205, 22-2207.

NOTES TO DECISIONS

Convictions—Mutually exclusive

Convictions of second defendant for burglary and grand larceny were mutually exclusive with conviction for receiving stolen property and bringing it into the District of Columbia, and vacating the burglary and larceny convictions which carried longer sentences cured any prejudice which resulted from the failure to properly instruct. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Evidence—Admissibility

Error, if any, in introduction into evidence of recordings between since deceased accomplice-informer and first defendant was not reversible error, in prosecution for conspiracy, burglary, grand larceny, interstate transportation of stolen property and bringing stolen property into the District of Columbia. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Admission into evidence of recorded conversations between since deceased accomplice-informer and first defendant which contained references to second defendant in joint trial did not violate second defendant's rights under the confrontation clause. *Id.*

Introduction in evidence in joint trial of recordings of conversation between first defendant and since deceased accomplice-informer was not improper on ground that recordings, which were made outside the presence of counsel, denied defendants' right to counsel. *Id.*

Government informer's suicide note, written six days prior to suicide, and which contained language exculpating second defendant, was not within the dying declaration hearsay rule exception where the note was not made with belief that death was imminent and did not concern the cause or circumstances of what was believed to be impending death. *Id.*

Accomplice-informer's handwritten suicide note, which contained language exculpating second defendant, was not admissible as declaration against the informer's penal interest where there was no corroboration of the exculpatory statement. *Id.*

Severance

Trial court did not abuse its discretion in prosecution for conspiracy, burglary, grand larceny, interstate transportation of stolen property, and bringing stolen property into the District of Columbia by denying severance to second defendant on ground of antagonistic defenses. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Chapter 2.—ABORTION

§ 22-201. Definition and penalty.

NOTES TO DECISIONS

Presentence hearing

Plea of guilty to conspiracy to commit abortion did not insulate accused from inquiry in presentence hearing as to extent of his conduct in abortion, notwithstanding contention that determination of guilt of a different offense resulted. *G. L. Warren v. United States* (D.C. App. 1973, 310 A. 2d 228).

Chapter 4.—ARSON

§ 22-401. Definition and penalty.

NOTES TO DECISIONS

Evidence—Sufficiency

Evidence was not sufficient to support convictions for arson, second-degree burglary while armed with a Molotov cocktail and possession of a Molotov cocktail. *United*

States v. L. S. Carter (1975, 522 F.2d 666, 173 U.S. App. D.C. 54).

Convictions of arson and of malicious burning of defendant's own property with intent to defraud were sustained by evidence including evidence with respect to access to premises, alibi evidence found by trial court to be incredible, evidence that fire occurred shortly before time for expiration of insurance policy for which continuance had not been arranged and evidence concerning cigarette match bomb and gasoline. *P. K. Chaconas v. United States* (D.C. App. 1974, 326 A. 2d 792).

— Suppression

Where fire inspectors, after fire, entered premises occupied by defendant, without objection by defendant, and defendant consented to removal of various items, items were not subject to suppression as evidence. *P. K. Chaconas v. United States* (D.C. App. 1974, 326 A. 2d 792).

Inferences

Giving of instruction that jurors were permitted to infer that second defendant was "guilty of the crimes charged," if they determined, beyond a reasonable doubt, that he was found in unexplained, exclusive possession of recently stolen property was reversible error where the presumed fact of guilt of arson, possession of a Molotov cocktail and second-degree burglary while armed with a Molotov cocktail did not flow from possession of recently stolen military rifles. *United States v. L. S. Carter* (1975, 522 F. 2d 666, 173 U.S. App. D.C. 54).

§ 22-402. Burning one's own property with intent to defraud or injure another.

NOTES TO DECISIONS

Evidence—Sufficiency

Convictions of arson and of malicious burning of defendant's own property with intent to defraud were sustained by evidence including evidence with respect to access to premises, alibi evidence found by trial court to be incredible, evidence that fire occurred shortly before time for expiration of insurance policy for which continuance had not been arranged and evidence concerning cigarette match bomb and gasoline. *P. K. Chaconas v. United States* (D.C. App. 1974, 326 A. 2d 792).

— Suppression

Where fire inspectors, after fire, entered premises occupied by defendant, without objection by defendant, and defendant consented to removal of various items, items were not subject to suppression as evidence. *P. K. Chaconas v. United States* (D.C. App. 1974, 326 A. 2d 792).

§ 22-403. Malicious burning, destruction, or injury of another's movable property.

NOTES TO DECISIONS

Elements of offense

The elements of malicious destruction of property are that the defendant injured or broke or destroyed or attempted to injure, break or destroy property; that the property was not the defendant's; that the defendant did so maliciously with intent to injure, break or destroy the property and for a bad or evil purpose, and not merely negligently or accidentally; and that the property was of a value of \$200 or more. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A.2d 336).

Evidence—Judicial notice

Court would take judicial notice of fact that liquor store, which was the "store" referred to in indictment charging malicious destruction of property of a value of \$200 or more, had a value exceeding \$200. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A. 2d 336).

— Sufficiency

Testimony of liquor store's manager that repairs to the store cost \$425 is sufficient to prove that the value of the property damaged was \$200 or more and is sufficient to support conviction for malicious destruction of property of a value of \$200 or more. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A. 2d 336).

Where evidence in prosecution for destruction of window in apartment showed that apartment was rented and

that defendant had merely been an overnight guest in apartment on a few occasions, defendant was properly convicted of destroying property despite his contention of lack of proof of ownership or possession of property. *J. N. Gurley v. United States* (D.C. App. 1973, 308 A. 2d 785).

Identification

Where witness did not have opportunity to see the face of the large man outside liquor store at close range because witness was watching from an eighth floor window but the parking lot outside the liquor store was illuminated, the witness did observe the man's general facial features, the cut of his hair, the shape of his head, his race, his height and his build and only 20 to 25 minutes elapsed between the crime and the identification, the on-the-scene identification procedures were permissible. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A. 2d 336).

Witness' identification of the defendant's clothes as identical to those worn by driver of automobile observed at burglary scene was not impermissibly suggestive because the defendant was observed alone in patrol wagon where witness had had two opportunities to view the driver's clothes both before and after the burglar alarm was activated, the identification occurred only 20 to 25 minutes after the second time witness saw the clothes and the witness identified the defendant's uniform rather than the defendant himself. *Id.*

Defendant's convictions of first-degree burglary, grand larceny, and malicious destruction of property were not supported by sufficient evidence, where, despite the complainant's testimony that he was able to identify defendant at showup because the image of defendant's face was implanted on his mind, the complainant was unable to identify defendant at trial, where his opportunity to observe the burglars was brief, where he saw them at night under artificial light, where his nearest observation of them was when they were running and 17 feet away, and where there was a significant discrepancy in almost all respects between the description given by complainant to the police and defendant's actual description, both physically and in respect to clothing. *W. B. Crawley v. United States* (D.C. App. 1974, 320 A. 2d 309).

Indictment

Relative imprecision in phrasing the value of the damaged property in indictment charging malicious destruction of property of a value of \$200 or more is not prejudicial error where defendants could not have been misled in any meaningful way and there was evidence to show that the cost of repair to the damaged store was well over \$200. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A. 2d 336).

Instructions

In prosecution based on defendants' unconsented entry into offices of chemical company and their destruction of certain property in it, instruction that Vietnam war was not issue in case and that, if government proved beyond reasonable doubt that one or more of defendants committed elements of crimes charged, law does not recognize as defense that defendants were motivated to commit their acts by sincere political, religious or moral convictions or in obedience to some higher law was not improper despite contention that instructions were coercive, tantamount to directed verdict of guilty and outside proper scope of judicial instruction. *United States v. M. R. Dougherty* (1972, 473 F. 2d 1113, 154 U.S. App. D.C. 76).

Sentence

Trial court did not erroneously fail to sentence youth under Federal Youth Corrections Act for misdemeanors he had admitted committing, where trial court expressly found that youth, who had committed the misdemeanors in question while still awaiting sentence by United States district court for attempted robbery and who had left without permission a development center and a halfway house while awaiting determination of armed robbery charges, was unlikely to be rehabilitated by Youth Corrections Act treatment. *R. J. Hubb v. United States* (D.C. App. 1972, 298 A. 2d 512).

Value of property

Within provisions of this section creating the felony of maliciously destroying property of a value of \$200 or more, the word "value" refers to the fair market value of the object or entity involved immediately before the

crime occurred regardless of whether there is destruction of an entire item of property or only injury which falls short of total destruction. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A. 2d 336).

When reparable damage or destruction is caused to a portion or portions of a greater whole, the value of the property damaged or destroyed is to be measured by the reasonable cost of the repairs necessitated by the malicious conduct of the defendant charged with malicious destruction of property of the value of \$200 or more. *Id.*

Chapter 5.—ASSAULT—MAYHEM—THREAT OF BODILY HARM

§ 22-501. Assault with intent to kill, rob, rape, or poison.

NOTES TO DECISIONS

Assistance of counsel

Defendant's rights to due process and effective representation by counsel are not violated because of fact that, in agreeing to continuance of trial date because of conflicts in court's calendar, defense counsel did not engage in on-the-record discussion of fact that defendant would become 22 years of age during interim and would therefore not be eligible for sentencing under Youth Corrections Act (18 U.S.C. 5005 et seq.). *J. Coleman, Jr. v. United States* (D.C. App. 1975, 332 A. 2d 355).

Competency hearing

Where pretrial examination had resulted in certification by hospital staff of competency and Superior Court judge after hearing had reached like result, district judge was not required to direct, sua sponte, further hearing on competency in prosecution for assault with intent to commit rape, and for robbery. *United States v. C. L. Tremble* (1972, 470 F. 2d 1272, 152 U.S. App. D.C. 363).

Corroboration

Sex charges may not be submitted to jury simply upon testimony of alleged victim; corroboration is essential to proof of each element. *United States v. C. L. Tremble* (1972, 470 F. 2d 1272, 152 U.S. App. D.C. 363).

Discovery

With the exception of records of impeachable convictions, the criminal records and records of arrests of government witnesses were not discoverable and the suppression of the testimony of government witnesses, as sanction for disobedience of pretrial discovery order, was in excess of trial court's authority. *United States v. W. C. Engram et ano.* (D.C. App. 1975, 337 A. 2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Double jeopardy

Where trial court, acting on good faith but erroneous belief that defendant had been entitled to certain information long before trial, first suggested continuance, which was declined by defendant, and then unsuccessfully sought defendant's consent to mistrial, and finally declared mistrial and discharged jury, without any insistence by defendant upon any right to completion of the trial by the first jury, jeopardy did not attach. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A.2d 465; cert. denied 96 S. Ct. 1751, —U.S.—).

Where counts of original indictment on which defendant was convicted failed properly to charge offense of assault with intent to commit forcible rape, right to be free of double jeopardy does not bar retrial on new indictment properly charging such offense. *J. Hutchinson v. United States* (D.C. App. 1975, 339 A. 2d 381).

Evidence—Admissibility

Spectrographic identification of defendant as maker of telephone call to which police officer was responding when shot was not sufficiently accepted by scientific community as a whole to form a basis for a jury's determination of guilt or innocence, and was inadmissible. *United States v. R. Addison* (1974, 498 F. 2d 741, 162 U.S. App. D.C. 199; aff'g 337 F. Supp. 641).

Erroneous admission of testimony based on spectrogram or so-called "voice print" analysis did not fatally infect jury's verdict and did not require a reversal, in light of overwhelming evidence of guilt. *Id.*

Defendant's conviction was not required to be set aside because of admissibility of testimony as to benzidine test

which showed presence of blood on penis shortly after alleged assault with intent to commit rape even if test would yield a positive response to substances other than blood, where defendant admitted at trial that there was blood on penis and attempted to attribute its presence to another source. *United States v. L. Smith* (1972, 470 F. 2d 377, 152 U.S. App. D.C. 229).

— Disclosure to defense

Where matter which prosecution had not disclosed prior to trial of indictment is inadmissible hearsay, i.e., a street rumor which remained unverified despite immediate investigation by police detective, and where detective did not abandon investigation until after positive identification of defendant had been made by principal victim and defendant had confessed to the crime, undisclosed information is not kind of material which prosecution should have furnished defendant in advance of trial. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A.2d 465; cert. denied 96 S. Ct. 1751, —U.S.—).

Evidence in proceeding on motion for new trial, or alternatively, dismissal of indictment, supported trial court's findings that the statements and testimony of witnesses whose statements were allegedly wrongfully withheld from the defense did not include evidence that was relevant or material or that would be helpful to the defense or tend to exculpate accused and that the disclosure to accused prior to trial of the statements would not have led to evidence that was relevant or material or that would tend to be exculpatory of murder and assault with intent to rob charges. *United States v. D. J. Bowles* (1973, 488 F. 2d 1307, 159 U.S. App. D.C. 407; cert. denied 94 S. Ct. 1591, 415 U.S. 991).

Where statements given by witnesses to police during murder investigation did not include evidence that was relevant or material or that would be helpful in the defense or tend to exculpate accused and the disclosure to accused prior to trial would not have led to evidence that was relevant or material or that would tend to be exculpatory, accused was not denied due process of law because the statements were withheld from the defense. *Id.*

— Polygraph tests

Expert testimony based on results of defendant's polygraph examination was inadmissible. *United States v. E. Zeiger* (1972, 475 F. 2d 1280, 155 U.S. App. D.C. 11; rev'g 350 F. Supp. 685).

— Sufficiency

Evidence that after defendants had taken money from 100-year-old victim the victim was choked with a cable until he lost consciousness is sufficient to support conviction for assault with intent to kill. *In the Matter of G. O. B.* (D.C. App. 1975, 343 A.2d 567).

Evidence, including testimony of complainant and others concerning incident, reasonably permitted a finding of guilt on charges of armed kidnapping, armed assault with intent to kill, and carrying a dangerous weapon. *R. N. Wooten v. United States* (D.C. App. 1975, 343 A. 2d 281).

Evidence, including the testimony of an eyewitness involving all three defendants in the assault upon victim, was sufficient to support verdict of jury finding defendants guilty of felony-murder and assault with intent to commit rape while armed. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Evidence in prosecution for assault with intent to commit rape was insufficient to establish that defendant intended to achieve sexual intercourse by force and violence and against will of prosecutrix. *United States v. C. L. Tremble* (1972, 470 F. 2d 1272, 152 U.S. App. D.C. 363).

Evidence was sufficient to support convictions of assault with intent to kill while armed. *United States v. J. Hill* (1972, 470 F. 2d 361, 152 U.S. App. D.C. 213).

— Weight

Generally, sexual assault charges by mentally abnormal girl should be subjected to great scrutiny. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

Identification

Where at hospital victim was shown sets of pictures which did not include defendant's picture, victim did not select any of these pictures, and after victim was released from hospital she selected defendant's picture from an-

other group of photographs which were presented to her at her home, there was nothing improper in showing victim the picture she had selected before her appearance as a witness at trial, and fact that this did not come out at hearing on identification issue was not a ground for new trial. *United States v. J. E. Marshall* (1975, 511 F.2d 1308, 167 U.S. App. D.C. 306).

No prejudicial error occurred in assault with intent to commit robbery prosecution where victim, in violation of pretrial suppression order, made in-court identification of defendant, in view of fact that pretrial suppression order, based upon judge's determination that the identification testimony was too weak, was improper. *J. R. Brown v. United States* (D.C. App. 1975, 349 A.2d 467).

— Lineup

Where officers who heard radio run for a crime arrested juvenile who was running from vicinity of the incident, and juvenile disclosed firsthand knowledge of the crime and implicated defendants, there was probable cause to arrest defendants and showup identification is not the product of an unlawful arrest. *In the Matter of G. O. B.* (D.C. App. 1975, 343 A.2d 567).

One-man showup held shortly after commission of offense is not unjustified because assault victim sustained head injury, where victim was alert and sitting up in hospital bed when confronting accused shortly after attack. *S. A. Washington v. United States* (D.C. App. 1975, 334 A.2d 185).

Remark of detective to complainant who was in hospital following assault, to effect that "We got your man, we think," does not violate due process by rendering showup procedure so suggestive as to create substantial likelihood of misidentification, where victim was able, prior to being struck, to observe defendant for sufficient period of time to be able to give detailed description, and where showup shortly followed the assault. *Id.*

Where defendant had been lawfully arrested for assault with intent to commit robbery while armed and was in custody or on bond, no court order was required before he could be viewed at lineup by victims of prior robbery, as long as presentment before magistrate was without undue delay and presence of counsel at lineup was assured. *United States v. J. F. Anderson* (1972, 352 F. Supp. 333).

Where a suspect arrested for one offense is to be viewed by witnesses to other offenses, there need be no Government disclosure or prior judicial determination of any kind concerning whether the suspect will be required to stand in a lineup, the number of witnesses who will view the lineup, the dates, times, places, nature, number or similarity of the offenses for which the suspect will be viewed, or the conditions under which the lineup will be held. *Id.*

Indictment

Any infirmity in grand jury proceedings because of failure of complainant and one of police officers to state that pistol used in shooting was victim's, that victim had informed grand jury that one defendant's job was that of a robber and that during the proceedings the prosecutor referred to another case against one defendant, is not of such a nature as to warrant dismissal since there was ample other evidence on which the grand jury could have returned the indictment. *E. Blango v. United States* (D.C. App. 1975, 335 A.2d 230).

Counts of indictment charging defendant with assaulting female persons with intent to carnally know and abuse such persons did not charge offenses under District of Columbia law where victims were females over 16 years of age. *United States v. J. Hutchinson* (1973, 478 F. 2d 997, 156 U.S. App. D.C. 87).

Instructions

Trial judge in prosecution for assault with intent to commit robbery did not err in denying defendant's request for instructions to jury on lesser included offense of simple assault where there was no showing that evidence was such that jury might rationally acquit defendant of greater charge and convict him of lesser charge and where element of intent to commit robbery was not sufficiently in dispute. *J. R. Brown v. United States* (D.C. App. 1975, 349 A.2d 467).

Court's instructions, after it received note mentioning that one juror did not believe testimony of the complainant, that since jury had been deliberating only two hours court was going to ask it to continue and that jurors were not to reveal to anyone how they stood numerically or otherwise on question of guilt or innocence, does not amount to coercion to find a guilty verdict, especially in the absence of suggestion that trial judge intimated impatience or displeasure with the jury by his instruction, facial expression or tone of voice and that sending back of jury was suggested by counsel for one defendant and neither counsel objected to judge's statement. *E. Blango v. United States* (D.C. App. 1975, 335 A.2d 230).

Intent

Assault with intent to kill while armed is a crime requiring specific intent. *United States v. G. A. Martin* (1973, 475 F. 2d 943, 154 U.S. App. D.C. 359).

In light of instructions as whole, erroneous instruction to effect that jury must find beyond reasonable doubt that defendant if he performed acts giving rise to charge of assault with intent to kill was in such a mental state that he was not capable of forming specific intent in question was harmless. *Id.*

Once defense of intoxication is interposed in prosecution on charge of assault with intent to kill while armed, burden rests with prosecution to establish that at time offense was committed defendant had capacity to form requisite specific intent. *Id.*

Lesser included offense

Counts of assault with a dangerous weapon were lesser included offenses of offenses of assault with attempt to commit robbery and armed robbery and, therefore, defendant could not be convicted of the former offenses in addition to the latter. *E. Quick v. United States* (D.C. App. 1974, 316 A. 2d 875).

Assault with dangerous weapon is lesser included offense of assault with intent to rob while armed. *United States v. W. J. Chavis, Jr.* (1973, 476 F. 2d 1137, 155 U.S. App. D.C. 190).

Where charges of assault with intent to commit rape while armed and charges of assault with a dangerous weapon arose from the same act or transaction, the latter charge, requiring proof of two of the three elements constituting former offense, merged with and became a lesser offense to the charge of assault with intent to commit rape while armed, barring conviction on the lesser offense. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127 155 U.S. App. D.C. 180).

Merger of offenses

In view of concurrent sentences imposed upon convictions for assault with intent to kill while armed and assault with a dangerous weapon, the mildness of the punishment adjudged, the trial judge's recommendation for psychiatric treatment and the necessity for conserving judicial resources, the Court of Appeals would not reach question as to whether the crime of assault with dangerous weapon merged into crime of assault with intent to kill while armed with a dangerous weapon, but would vacate the convictions on the four counts which charged assault with a dangerous weapon. *United States v. J. Hill* (1972, 470 F. 2d 361, 152 U.S. App. D.C. 213).

New trial

Defendant, who had been convicted of assault with intent to commit robbery and armed robbery, was not entitled to new trial on ground of newly discovered evidence consisting of his posttrial information that an attempt had been made on his life by the "real" robber, whom defendant and another witness could identify, and that defendant had not given his attorney the information prior to trial because of fear for his life, as defendant had been apprehended on strength of positive identifications it was unlikely that the additional testimony, which would merely have been cumulative of defense of innocent presence, would have produced a different result. *E. Quick v. United States* (D.C. App. 1974, 316 A. 2d 875).

Prosecutor's comments

Trial court did not err in refusing to give curative instruction after prosecutor suggested, in closing argument, that defendant may have carried his pistol prior to the

incident in question with intent of using it to commit a crime since that statement was a proper rebuttal to defense counsel's argument that defendant had been carrying the gun to defend himself and that the government had failed to show any motive for the shooting and, in addition, court subsequently instructed jury that arguments of counsel are not evidence. *A. C. Fletcher v. United States* (D.C. App. 1975, 335 A.2d 248).

Any error in allowing government to comment, in closing argument, on failure of the defendant to call one of his companions, who was present at scene, is harmless, notwithstanding that court had denied government's request for a missing witness instruction, where challenged remarks were limited to observation that such individual had not testified and did not directly urge jury to draw from that fact an adverse inference and defendant had previously explained that he had not attempted to secure such witness because he did not believe that the witness would be willing to incriminate himself. *Id.*

Prosecutor's closing comment that assault victim had the courage to take stand and had the guts to get up and tell what happened does not constitute reversible error as improper comment on defendants' failure to testify; in view of fact that statements by prosecutor were merely an attempt to rehabilitate victim, who was only prosecution witness who testified as to circumstances of shooting, after attack on his testimony, it cannot be said that jury would naturally and necessarily draw an adverse inference against the silent defendants; in any event, court emphasized that defendants had an absolute right not to testify. *E. Blango v. United States* (D.C. App. 1975, 335 A.2d 230).

Comments of prosecutor during assault trial to the effect, inter alia, that missing witness was too scared to come and testify, that defendants were killers and were dressed like gangsters, that one defendant was a "young buck," that guilty verdict would be a matter of achievement and courage, and that presumption of innocence might not apply as much to defendants as it might to others in less serious cases did not rise to the level of substantial prejudice necessary for reversal, in light of the strength of the Government's case and correcting instructions by the trial court. *R. L. Smith v. United States* (D.C. App. 1974, 315 A. 2d 163; cert. denied 95 S. Ct. 174, 419 U.S. 896).

Prosecutor's closing and rebuttal arguments which referred to defenses of insanity interposed by famous defendants in other cases and to actions of Hitler and Napoleon were improper and were so highly prejudicial as to require reversal. *United States v. W. E. Hawkins* (1973, 480 F. 2d 1151, 156 U.S. App. D.C. 259).

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and was convicted of second-degree murder, would also be nullified. *Id.*

Question for jury

Whether defendant and his accomplice intended to deprive off-duty security officer for apartment complex of some property at time he was forced at gunpoint to submit to successive searches by accomplice during robbery of rental office of complex was jury question, in prosecution for assault with intent to commit robbery while armed, even though nothing was taken from victim and robbers apparently only intended to assure themselves that the security officer was not armed while they were engaged in stealing money of rental company in contradistinction to money or valuables of individual employees. *W. Dowtin, Jr. v. United States* (D.C. App. 1975, 330 A.2d 749).

Remand

Where evidence established offense of assault but not assault with intent to commit rape, remand was appropriate to determine whether new trial should be ordered or conviction entered for assault. *United States v. C. I. Tremble* (1972, 470 F. 2d 1272, 152 U.S. App. D.C. 363).

Right to counsel

Where defendant was arrested on probable cause for assault with intent to commit rape and was advised of right to counsel but did not request counsel, defendant's constitutional right to counsel was not infringed by the administration of a benzidine test by trained police technician to determine presence of blood on penis shortly after assault. *United States v. L. Smith* (1972, 470 F. 2d 377, 152 U.S. App. D.C. 229).

If counsel had been present and had advised defendant, validly arrested on probable cause for assault with intent to commit rape, against submitting to benzidine test to determine presence of blood on penis such advice would have been futile, since police were entitled to make such test which was one of the preparatory steps excluded from Sixth Amendment right to counsel. *Id.*

Search and seizure

Where defendant was accused of assault with intent to commit rape and taken to police station where there was administered to him shortly after his arrival at station and after a warning of his constitutional rights, a benzidine test to determine presence of blood on penis, the administration of the chemical test by a trained police technician was pursuant to valid arrest for which there was probable cause and was a constitutionally valid search. *United States v. L. Smith* (1972, 470 F. 2d 377, 152 U.S. App. D.C. 229).

Severance

In prosecution of defendants on murder and rape charges, trial court did not abuse its discretion in denying motion of defendant brothers for a severance from codefendant, who had fatally stabbed the victim, notwithstanding defendants' claim that the evidence against the codefendant was much stronger than the evidence against them. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

Speedy trial

Defendant is not denied speedy trial by virtue of court's granting continuance of trial date from November 2 to January 15 of succeeding year where delay was not instigated by prosecutor but was due solely to court's involvement in other litigation, trial was conducted less than eight months after alleged crime, and defendant made no objection in trial court to continuance and asserted no Sixth Amendment rights prior to his appeal. *J. Coleman, Jr. v. United States* (D.C. App. 1975, 332 A.2d 355).

Twenty-five month delay between attempted street robbery and trial did not deny defendant his constitutional right to speedy trial where first ten months were largely consumed by exigencies of indictment, pretrial motions, and efforts to reach disposition by plea, where ensuing 14-month delay was caused by trial court's heavy involvement in other litigation, where defendant voiced no speedy trial considerations until two days before trial, where there was no substantial showing of prejudice, and where defendant was free on bail for 17 of the 25 months. *United States v. M. E. Jones* (1973, 475 F. 2d 322, 154 U.S. App. D.C. 211).

Witnesses

Trial court, which denied a defense motion during trial to have key prosecution witness, who was a chronic alcoholic, subjected to a psychiatric examination with respect to his competency, did not abuse its discretion in refusing to treat the witness as a person of actual or potential incompetency, notwithstanding the claims of defendants, in support of their motion, that the testimony given by the witness was highly confusing and that hospital records indicated he had a clinical history which rendered him wholly unreliable. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

Competency of mentally retarded 18-year-old prosecutrix to testify in prosecution for assault with intent to commit rape while armed, assault with a dangerous weapon and carrying a dangerous weapon, was a threshold question of law committed to the trial court's discretion; it remained for the jury, however, to assess credibility of the witness and the weight to be given her testimony. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

§ 22-502. Assault with intent to commit mayhem or with dangerous weapon.**NOTES TO DECISIONS****Abuse of discretion**

In prosecution of defendant on charges of cruelty to a child and assault with a dangerous weapon, namely, a belt, the trial court did not abuse its discretion in permitting the government to introduce, during its direct case, evidence of defendant's prior conviction of having assaulted the same child, where intent was placed clearly in issue by the contention in defendant's opening statement that an assault episode, involving the child's head being struck by a pliers tossed by defendant, was accidental. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Allen charge

Where Allen charge was given after jury which had not been sequestered had deliberated 2 hours and 20 minutes and announced that they had reached a verdict on charge of carrying a dangerous weapon but were deadlocked on charge of assault with deadly weapon and after court took jury verdict of acquittal on carrying charge and where jury deliberated only 25 minutes before returning verdict of guilty on assault charge, Allen charge was not coercive to the point of requiring reversal of conviction. *F. C. Winters v. United States* (D.C. App. 1974, 317 A. 2d 530).

Arrest

Totality of facts and circumstances, including information from radio report about fleeing pedestrian and pursuing citizen, and identification of pursuing citizen, justified warrantless arrest of pedestrian while he was being transported by officers to scene of reported incident, even though sum total of information available to officers when they placed pedestrian under arrest came from an unidentified victim of an undiscovered robbery and assault. *G. W. Bates v. United States* (D.C. App. 1974, 327 A. 2d 542).

Assistance of counsel

Even if pretrial identifications which resulted from one lineup and one two-man showup were improper, defendant was not denied effective assistance of counsel because of counsel's failure to move, pretrial, for suppression of the identifications where there was abundant evidence of sources independent of those pretrial identifications to support the in-court identifications. *S. S. Shelton v. United States* (D.C. App. 1974, 323 A. 2d 717).

Where an attorney has represented a convicted defendant at trial and, as defendant's attorney on appeal, concludes in good faith that a legitimate issue exists as to the constitutional adequacy of his representation of the defendant at trial, it is the duty of the attorney to move to withdraw as counsel on appeal. *Id.*

Construction

Where language of statute or statutory scheme in general does not fix punishment clearly and without ambiguity, a "rule of lenity" requires that court resolve doubts against turning a single transaction into multiple offenses. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Cross-examination

In prosecution for unlawful entry and assault with deadly weapon, trial court did not improperly limit defendant's attempts to cross-examine government witnesses as to their possible desire to protect their employer from civil suit. *J. F. Hyman v. United States* (D.C. App. 1975, 342 A.2d 43).

Where defendant, charged with possession of prohibited weapon and with assault with a dangerous weapon, called as a character witness his employer who testified that defendant had a good reputation in the community of keeping the peace and good order, cross-examination of employer as to whether he had heard that defendant had been convicted of the crime of false pretenses was proper. *S. M. Darden v. United States* (D.C. App. 1975, 342 A.2d 24).

Where government's only witness to fact that stabbing was intentional was victim, refusal to permit defense counsel to cross-examine witness, with whom defendant

had been living, as to whether or not she was aware of another woman in defendant's life was error. *S. White v. United States* (D.C. App. 1972, 297 A. 2d 766).

Dangerous weapon

An imitation or blank pistol used in an assault by pointing it at another is a "dangerous weapon" in that it is likely to produce great bodily harm. *E. Harris, Jr. v. United States* (D.C. App. 1975, 333 A.2d 397).

Discovery

Where matter which prosecution had not disclosed prior to trial of indictment is inadmissible hearsay, i.e., a street rumor which remained unverified despite immediate investigation by police detective, and where detective did not abandon investigation until after positive identification of defendant had been made by principal victim and defendant had confessed to the crime, undisclosed information is not kind of material which prosecution should have furnished defendant in advance of trial. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A.2d 465; cert. denied 96 S. Ct. 1751, —U.S.—).

Refusal, in criminal prosecution in which accused was convicted of sodomy, taking indecent liberties with a minor and assault with a deadly weapon and in which three potential government witnesses were of tender age, to grant accused discovery of names and addresses of government witnesses was not abuse of discretion. *J. C. Davis v. United States* (D.C. App. 1974, 315 A. 2d 157).

Refusal to grant accused access to complaining witness' subpoenaed school records, which reflected no prior homosexual or other serious behavioral problems, was not reversible error. *Id.*

Double jeopardy

Where trial court, acting on good faith but erroneous belief that defendant had been entitled to certain information long before trial, first suggested continuance, which was declined by defendant, and then unsuccessfully sought defendant's consent to mistrial, and finally declared mistrial and discharged jury, without any insistence by defendant upon any right to completion of the trial by the first jury, jeopardy did not attach. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A.2d 465; cert. denied 96 S. Ct. 1751, —U.S.—).

Elements of offense

Intent to use unlawfully is a required element in both the offense of assault with a dangerous weapon and the offense of possession of a dangerous weapon with intent to use unlawfully against another. *United States v. V. B. Brooks* (D.C. App. 1974, 330 A. 2d 245).

In prosecution on charges of cruelty to child and assault with a dangerous weapon, namely, a belt, intent was an essential element of the offenses and hence had to be proved by the Government beyond a reasonable doubt. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Evidence—Admissibility

With respect to defendant's defense to charge of assault with a dangerous weapon that he was "only joking" when he pointed weapon at another, evidence that defendant was suffering withdrawal from heroin and was in need of money on the day of the incident and exhibited physical symptoms inconsistent with a frivolous state of mind is relevant to show intent or to negate lack thereof. *E. Harris, Jr. v. United States* (D.C. App. 1975, 333 A.2d 397).

Spectrographic identification of defendant as maker of telephone call to which police officer was responding when shot was not sufficiently accepted by scientific community as a whole to form a basis for a jury's determination of guilt or innocence, and was inadmissible. *United States v. R. Addison* (1974, 498 F. 2d 741, 162 U.S. App. D.C. 199; aff'g 337 F. Supp. 641).

Erroneous admission of testimony based on spectrogram or so-called "voice print" analysis did not fatally infect jury's verdict and did not require a reversal, in light of overwhelming evidence of guilt. *Id.*

Admitting colored photographs of complainant showing scars on upper portion of her body was not an abuse of discretion, in prosecution for, inter alia, assault with a dangerous weapon and malicious disfigurement, where photographs were not inflammatory and were clearly probative of the condition of complainant's body and, thus,

were material on issue of malicious disfigurement. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

In prosecution on charges of cruelty to a child and assault with a dangerous weapon, prior assault by defendant on the same child, which occurred some 17 months earlier, was not too remote to preclude its receipt in evidence on the question of intent. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Evidence as to defendant's prior assault on the same child unquestionably was relevant as to whether he had the requisite intent to support verdicts finding him guilty of the charges of cruelty to a child and assault with a dangerous weapon, namely, a belt. *Id.*

Where only connection between gun and defendant was that gun, similar to one complainant said defendant had used, was found nearly five hours after alleged assault had occurred, not within neighborhood of hotel where assault took place, in an automobile owned and driven by defendant's brother and in which a short time before defendant had been a passenger, any connection between gun produced and alleged assault would be purely conjectural and where vital issue was whether gun was used in the altercation, admission of gun should have been rejected because connection with defendant was too conjectural and remote. *R. C. Burleson v. United States* (D.C. App. 1973, 306 A. 2d 659).

— Good character

Prosecutor cannot offer bad character evidence unless accused first introduces evidence of good character, and even then prosecutor's proof is restricted to community reputation and to trait and traits to which accused's own character evidence related. *United States v. J. A. Lewis* (1973, 482 F. 2d 632, 157 U.S. App. D.C. 43).

When character witness, either for accused or for prosecution, is offered, he is subject to cross-examination as to his testimonial qualifications just like any other witness, and probe on cross-examination may extend to those matters, among others, which legitimately affect witness' knowledge of accused's community reputation for the character trait or traits which he confirms. *Id.*

Where at time judge ruled, during second trial for armed robbery and related offenses, that if defense put on good character witnesses then prosecution could cross-examine such witnesses to determine if they were aware of defendant's arrest for narcotics two weeks before commencement of second trial but ten months after the occurrence of offenses for which he was being tried, judge did not know whether witness would speak to reputation for peace and good order or as to reputation for truth and veracity, trial judge did not have essential information and ruling was error, but in view of government's case error was not prejudicial. *Id.*

— Sufficiency

Testimony by prison guards that they were locked in a cell and held as hostages, that defendant frequently checked the cell where the guards were confined, that he told the guards that he "had nothing to lose by going out looking," that defendant separated himself from a group of inmates who did not want to escape immediately before rebellious inmates clustered for breakout attempt, and that defendant thereafter came by the cell many times armed with a short piece of steel with a sharp end and threatened the hostages was sufficient to sustain defendant's convictions for attempted escape, armed kidnapping, robbery, and riot. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, — U.S. —).

Evidence, including testimony of identification witness, was sufficient to sustain conviction of armed robbery and assault with deadly weapon. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

Evidence, even though resting solely upon victim's identification of defendant, was sufficient to go to jury on issue of identification of victim's assailant. *K. Smith v. United States* (D.C. App. 1975, 343 A.2d 40).

Uncontradicted evidence that defendant grabbed pistol out of hand of complainant and, as he threw pistol to his brother, yelled at brother to kill victim is sufficient for jury to find that defendant was guilty of assault with a dangerous weapon. *E. Blango v. United States* (D.C. App. 1975, 335 A.2d 230).

Evidence, including testimony that shotgun shells similar to those used in gun used in armed robbery were found in defendant's automobile, is sufficient to sustain convictions of armed robbery and assault with dangerous weapon. *D. Borrero v. United States* (D.C. App. 1975, 332 A.2d 363).

Positive identification by one eyewitness and somewhat tentative identifications by two other eyewitnesses were sufficient basis for finding juvenile guilty of robbery and assault with dangerous weapon. *In the Matter of W. K.* (D.C. App. 1974, 323 A.2d 442).

Evidence was sufficient to sustain conviction for assault with a deadly weapon charged as separate and distinct from armed robbery offense. *C. M. Dixon, Jr. v. United States* (D.C. App. 1974, 320 A.2d 318).

While the development of direct testimony on the beating of child was less than a model of precision, the evidence as a whole was adequate to sustain jury's verdict finding defendant guilty of assault with a dangerous weapon, namely, a belt. *K. Robinson v. United States* (D.C. App. 1974, 317 A.2d 508).

Evidence was sufficient to support convictions of first-degree burglary and of assault with a deadly weapon despite claim that, absent corroborating evidence, testimony of complaining witness alone could not support findings of guilt. *United States v. R. Carmichael* (1972, 469 F.2d 937, 152 U.S. App. D.C. 197).

Where evidence disclosed a single act on part of defendant directed simultaneously at two persons, so that only a single conviction for assault on two persons was supported by evidence, convictions of first-degree burglary and of one assault would be affirmed, but conviction of an additional assault would be set aside, and sentences would be vacated and case would be remanded for resentencing. *Id.*

Identification

Identification procedure whereby occupants of car were returned in police van to site of gunshots where witness identified defendant from five persons in van, without any assistance from police, was not unduly suggestive. *G. S. Crawley v. United States* (D.C. App. 1974, 314 A.2d 487).

Knowledge on part of an eyewitness that persons on trial were arrested for crime may be taken into account where there is other indication of suggestivity, but mere fact that suspects are included within lineup and that witnesses know or assume this to be the case is an inescapable aspect of lineup identification procedure and does not, without more, provide reason for exclusion of pretrial and in-court identifications. *United States v. C. L. Pearson* (1973, 478 F.2d 659, 155 U.S. App. D.C. 455).

Pretrial and in-court identifications of defendant by eyewitness to crime were not subject to exclusion by reason of fact that investigating officer told witness at lineup that she had "done well," where there was no reason to suppose that officer's remark was more than a comforting gesture to witness, who was, quite naturally, on edge, and jury had before it testimony as to (slightly more tentative) lineup identification and was likely to credit this, which was uninfluenced by subsequent remark, far more than taken for granted in-court identification. *Id.*

Where there was substantial doubt as to validity of uncorroborated identification evidence, which was provided by two alleged victims in prosecution for robbery and assault with dangerous weapon and on which conviction was based, case would be remanded to permit district court to make fresh determination as to action which should be taken in interest of justice. *United States v. L. Harris* (1973, 475 F.2d 359, 154 U.S. App. D.C. 248).

Indictment

Proof that defendant pointed a blank or gas cartridge-type pistol at another is not at variance with indictment charging that the weapon was a "pistol," and, in any event, no prejudice to defendant exists in view of defendant's admission that he knew the nature of the weapon seized from him. *E. Harris, Jr. v. United States* (D.C. App. 1975, 333 A.2d 397).

Insanity defense

Where defendant, indicted for sodomy, assault with dangerous weapon and mayhem, neither raised defense

of insanity prior to return of jury verdict of guilty nor brought to court's attention prior imprisonment for sex-related crime or attempted suicide while in prison and confinement there for psychiatric treatment, defendant had not been improperly deprived of defense of insanity during trial. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A.2d 238).

Instructions

Trial court properly instructed jury on testimony of accomplices rather than testimony of informers with respect to testimony of witness who had pled guilty to one count of indictment under which he and defendant were charged on the day before defendant's trial and who had participated in the crime with defendant. *United States v. M. W. Thorne* (1975, 527 F.2d 840, — U.S. App. D.C. —).

Where soon after retiring jury requested instruction on whether aiding and abetting instruction applied to armed robbery count of indictment as well as assault charge, trial court's charging jury that aiding and abetting instruction was applicable to both counts in absence of defendant was, at most, harmless error. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

Giving of instruction that jury must acquit unless prosecution proved each element beyond a reasonable doubt is not plain error on ground that instruction compelled jury to find defendant guilty. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A.2d 140).

The failure of trial court to give a model identification instruction sua sponte is not reversible error, even though prosecution was based on identification of only one witness, especially in view of other instructions apprising jury of duty to find identification convincing beyond a reasonable doubt. *K. Smith v. United States* (D.C. App. 1975, 343 A.2d 40).

Under the circumstances, trial judge did not abuse his discretion in denying requested "missing witness instruction." *Id.*

Promptly corrected misstatement of instruction by court to effect that no specific intent and only general intent need be found for conviction on count charging possession of a prohibited weapon was not so confusing as to prevent fair deliberation of defendant's innocence by jury which convicted him of the greater offense of assault with a dangerous weapon, the general intent crime, and reached no verdict, as it was instructed, on lesser included offense of possession of a prohibited weapon. *S. M. Darden v. United States* (D.C. App. 1975, 342 A.2d 24).

Where police officers testified that they arrived at apartment in response to disorderly conduct complaint, that they were confronted by defendant who was kicking at the door and yelling profanities, that they placed her under arrest, which she resisted violently, that she broke away and obtained a knife, and that she advanced on the officers, requiring them to draw their guns and seek reinforcements to subdue her, and where defendant testified that she had not threatened any officer with a knife but had herself been attacked by the officers, defendant is not entitled to an instruction on self-defense. *C. L. Holt v. United States* (D.C. App. 1975, 340 A.2d 827).

Jury instruction that if jury found beyond reasonable doubt that defendant had committed acts which constituted essential elements of crimes charged, then he must be found guilty, was equivalent to trial judge directing verdict of guilty, and was plain error. *S. Watts v. United States* (D.C. App. 1974, 328 A.2d 770).

Even if aiding and abetting instruction was unwarranted in proceeding on charge of assault, giving of it did not necessitate reversal of defendant's conviction on assault counts, where the jury's acquittal of defendant on two counts of second degree murder indicated that it had not found defendant guilty of assault on aiding and abetting theory and there was strong evidence that defendant had committed his own assault upon such persons. *United States v. G. Alexander and B. Murdock* (1972, 471 F.2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Jencks Act

Refusal to strike testimony of witnesses on account of prosecution's failure to preserve and produce their grand jury testimony was not error where it appeared that their testimony was not recorded due to a malfunction of a recording device, without negligence or bad faith on Gov-

ernment's part. *D. L. Washington v. United States* (D.C. App. 1975, 343 A.2d 560).

Joinder

In view of fact that scene of armed robbery and assaults on January 17 was different from that of armed robbery and assault on January 11 and assaults on January 16, the victims were different, and only common factor was that in each case the offender was a man wearing a fur coat and fur hat, and that there was no evidence of a common scheme or plan embracing commission of all of the offenses, it was prejudicial error to join trial of charges relating to offenses on January 17 with trial on other counts alleging offenses on January 11 and January 16, notwithstanding Government's contention that evidence of each offense was simple and distinct so that jury could not possibly have been confused. *United States v. T. E. Carter* (1973, 475 F. 2d 349, 154 U.S. App. D.C. 238).

Judge's comments

In prosecution for, inter alia, carrying a dangerous weapon, where comment by the court that if there was any believable evidence in the case, it was to effect that pistol was carried outside defendants' home or place of business was sustained by uncontradicted evidence and judge explicitly charged that all matters of fact were to be determined by the jury, no harm could result to defendants, who, in any event, failed to object. *United States v. T. B. Dixon* (1972, 469 F. 2d 940, 152 U.S. App. D.C. 200).

Lesser included offense

Where armed assault was essential part of proof establishing armed rape, armed assault was lesser offense included within the armed rape, and assault conviction was vacated. *United States v. E. Edmonds, Jr.* (1975, 524 F. 2d 62, 173 U.S. App. D.C. 241).

Conviction of assault with dangerous weapon upon individual is vacated as lesser included offense of armed rape against such individual. *M. Bell v. United States* (D.C. App. 1975, 332 A.2d 351).

Conviction of assault with dangerous weapon upon individual in connection with liquor store holdup is not vacated, where it is the only offense against such individual for which defendant was charged, despite fact that assaults against other individuals were vacated as lesser included offenses of armed robbery and armed rape against such individuals. *Id.*

Assault with dangerous weapon on motel clerk was lesser included offense of armed robbery of same person, and conviction of former could not stand as conviction for another offense. *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

Assaults of bank tellers with dangerous weapons were lesser included offenses of armed robberies of tellers and defendants could not be convicted of both the robberies and the assaults. *United States v. E. L. Cooper* (1974, 504 F. 2d 260, 164 U.S. App. D.C. 191).

Assault with dangerous weapon was lesser included offense in armed robbery offense, and additional convictions for assault with dangerous weapon would accordingly be vacated where defendant had been convicted on three armed robbery counts. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

Where concurrent sentences imposed on each conviction for assault with a dangerous weapon were adjudged to run concurrently with burglary and armed robbery convictions, no remand for resentencing was necessary on vacation of convictions for assault with a dangerous weapon. *Id.*

Assault with dangerous weapon is lesser included offense of principal offense of armed robbery; accordingly, defendant could not be convicted of lesser offense in addition to greater. *United States v. E. L. Inge, Jr.* (1974, 494 F. 2d 1102, 161 U.S. App. D.C. 183).

Inasmuch as assault with a dangerous weapon is included in armed robbery, and defendant was convicted of both offenses, judgments and sentences for assault with a dangerous weapon were required to be vacated. *United States v. J. F. Anderson* (1974, 490 F. 2d 785, 160 U.S. App. D.C. 217).

It was improper to convict defendant both for assault with a dangerous weapon and armed robbery where the

assault was a necessary part of the evidence needed to support the count of armed robbery. *R. Taylor v. United States* (D.C. App. 1974, 324 A. 2d 683).

Since evidence showed that offenses arose out of separate acts no need existed to consider whether assault with a dangerous weapon was a lesser included charge of malicious disfigurement. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

Counts of assault with a dangerous weapon were lesser included offenses of offenses of assault with attempt to commit robbery and armed robbery and, therefore, defendant could not be convicted of the former offenses in addition to the latter. *E. Quick v. United States* (D.C. App. 1974, 316 A. 2d 875).

Assault with dangerous weapon was lesser included offense of armed robbery; thus, defendants could not be convicted of both three counts of armed robbery and three counts of assault with a deadly weapon and convictions of assault would be reversed. *United States v. T. McKinley* (1973, 485 F. 2d 1059, 158 U.S. App. D.C. 280).

Offense of assault with dangerous weapon is included in armed robbery; thus defendant should not have been sentenced to concurrent terms of five to 15 years on counts charging armed robbery and to terms of three to ten years on counts charging assault with dangerous weapon and the sentences imposed for assault with dangerous weapon must be vacated. *United States v. E. C. Thomas* (1973, 485 F. 2d 1012, 233 U.S. App. D.C. 158).

Assault with a dangerous weapon is a lesser included offense of assault with intent to commit robbery while armed, and thus defendant could not be convicted of the lesser as well as the greater offense. *United States v. G. L. Alston* (1973, 483 F. 2d 1264, 157 U.S. App. D.C. 261).

Assault with a dangerous weapon convictions were vacated as lesser included offenses in armed robbery and armed rape. *United States v. R. E. Adams, Jr.* (1973, 481 F. 2d 1099, 156 U.S. App. D.C. 415).

Assault with dangerous weapon is lesser included offense of assault with intent to rob while armed. *United States v. W. J. Chavis, Jr.* (1973, 476 F. 2d 1137, 155 U.S. App. D.C. 190).

Assault with a dangerous weapon is a lesser included offense of robbery while armed. *United States v. J. Johnson* (1973, 475 F. 2d 1297, 155 U.S. App. D.C. 28).

Where jury returned a verdict of guilty on each of four counts of robbery while armed involving different victims it was error to receive verdicts from the jury on the four counts of assault with a dangerous weapon, a lesser included offense, with respect to the same victims. *Id.*

Crime of assault with a dangerous weapon is a lesser included offense within the crime of armed robbery and where defendant was sentenced upon conviction of both crimes, sentence on crime of assault with a dangerous weapon was vacated. *J. L. Skinner v. United States* (D.C. App. 1973, 310 A. 2d 231).

Mental capacity

Record, including testimony of a private psychiatrist who examined defendant at government expense, was sufficient to support finding that criminal acts committed by defendant (armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon) were not so proximately tied to defendants mental impairment as to require his exculpation. *United States v. G. A. Wilson* (1972, 471 F. 2d 1072, 153 U.S. App. D.C. 104; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Merger of offenses

Where, in course of armed robbery, shotgun was pointed at two distinct individuals at different times, there was no error in entering separate judgments of conviction of armed robbery and assault with dangerous weapon. *D. Borrero v. United States* (D.C. App. 1975, 332 A.2d 363).

Where assault with dangerous weapon offense was submitted to jury on specific instruction that it could convict on assault with dangerous weapon charge only if it found that separate and apart from pointing the gun at complaining witness, the complaining witness were beaten with the gun, and jury returned verdict of guilty, assault with dangerous weapon was not a lesser included offense within the armed robbery, offenses did not merge, and punishment for both did not constitute cumulative punishment. *C. M. Dixon, Jr. v. United States* (D.C. App. 1974, 320 A. 2d 318).

Convictions of assault with a dangerous weapon merged with armed robbery convictions connected with same robbery of drugstore and would thus be set aside. *United States v. T. R. Toy* (1973, 482 F. 2d 741, 157 U.S. App. D.C. 152).

Where armed robberies and assaults with a dangerous weapon were committed against same persons, latter offenses merged into former, and convictions on assault charges could not stand, though a remand for resentencing was not required where defendant had been given separate sentences, and all sentences were set to run concurrently. *United States v. A. Holiday* (1973, 482 F. 2d 729, 157 U.S. App. D.C. 140).

A count charging assault with a dangerous weapon is merged with a count charging armed robbery. *J. N. Smith v. United States* (D.C. App. 1973, 312 A. 2d 781).

In view of concurrent sentences imposed upon convictions for assault with intent to kill while armed and assault with a dangerous weapon, the mildness of the punishment adjudged, the trial judge's recommendation for psychiatric treatment and the necessity for conserving judicial resources, the Court of Appeals would not reach question as to whether the crime of assault with dangerous weapon merged into crime of assault with intent to kill while armed with a dangerous weapon, but would vacate the convictions on the four counts which charged assault with a dangerous weapon. *United States v. J. Hill* (1972, 470 F. 2d 361, 152 U.S. App. D.C. 213).

Mistrial

Refusal to declare a mistrial, on ground that disturbance which occurred outside the courtroom but in jury's presence, which involved defendant and his father and which was prompted by removal of the father for creating a disturbance in the courtroom, is not abuse of discretion where after full hearing trial judge found that incident was prompted by defendant, without provocation from prosecution, and court fully instructed jury to disregard incident and reach a verdict based solely on evidence presented in the courtroom. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A.2d 140).

Plain error

In prosecution for cruelty to a child and assault with a dangerous weapon, it was not plain error for the trial judge to read to the jury evidence of defendant's prior guilty plea to a charge of assault involving the same child. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

The identification of defendant's photograph by assault victim, the two lineup identifications, the composite drawing, defendant's presence in the area of the attack, the two in-court identifications of him, and the clothing recovered from his home left so small a probability that probable cause was lacking in the case that the discretion of the Court of Appeals to consider plain error would not be wisely exercised by entertaining unraised issue regarding the trial court's alleged error in not suppressing identifications flowing from photographs taken of defendant when he was allegedly taken to police station without probable cause. *R. E. Adams, Jr. v. United States* (D.C. App. 1973, 302 A. 2d 232).

Prearrest delay

Record was devoid of any indication that delay in arresting defendant, which occurred ten months after date of the offenses, was the product of any deliberate effort by police to gain an advantage, record furnished abundant evidentiary support for finding that a reasonable endeavor was made to locate defendant and, in addition, record sustained additional finding that, in any event, defendant was not harmed by the delay, in prosecution for armed robbery, assault with a dangerous weapon, and for carrying a pistol without a license. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Prejudicial error

Where defendant's guilt on charge of assault with dangerous weapon turned wholly on credibility of complainant's testimony, refusal of trial court to permit defense counsel to ask complainant with whom defendant had been living whether she was aware of another woman in defendant's life was prejudicial error. *S. White v. United States* (D.C. App. 1972, 297 A. 2d 766).

Prosecution

Where juvenile, who had stopped at roadblock but on spying an opening swerved toward opening and approaching officer, with officer leaping to safety as vehicle brushed his trousers, was charged with, among other things, assault on a police officer and assault with a dangerous weapon, i. e., the automobile, dismissal of count charging assault on a police officer did not also require dismissal of charge of assault with a dangerous weapon. *In the Matter of J. A. H.* (D.C. App. 1974, 315 A. 2d 825).

The conviction of defendant for federal bank robbery by force and violence and in addition thereto for assault with a dangerous weapon under the D.C. Code permitting a maximum sentence of up to 30 years, whereas if defendant had been charged with federal crime of assault with a dangerous weapon in connection with bank robbery his maximum sentence would have been no more than 25 years, was plain error, since it permitted Government to obtain a sentence longer than the maximum authorized under highest tier of bank robbery scheme. *United States v. C. L. Canty* (1972, 469 F. 2d 114, 152 U.S. App. D.C. 103).

Under the sovereign doctrine a state could prosecute defendant for robbery or assault even though he had already been tried for federal bank robbery in a federal court and thus make it possible for defendant to serve longer sentence than Congress had authorized in federal statute, but doctrine had no application where the federal bank robbery statute and the D.C. Code were enacted by the same sovereign. *Id.*

Prosecutor's comments

Where, although issue of witness' credibility was salient, Government's evidence was strong, objection to improper argument was promptly made and statement stricken, and only one such statement was made over entire course of prosecutor's closing and rebuttal arguments, no prejudicial error occurred when prosecutor told jury that it could fairly conclude that defendant "almost appeared irrational" on stand. *J. F. Hyman v. United States* (D.C. App. 1975, 342 A. 2d 43).

Comments of prosecutor during assault trial to the effect, inter alia, that missing witness was too scared to come and testify, that defendants were killers and were dressed like gangsters, that one defendant was a "young buck," that guilty verdict would be a matter of achievement and courage, and that presumption of innocence might not apply as much to defendants as it might to others in less serious cases did not rise to the level of substantial prejudice necessary for reversal, in light of the strength of the Government's case and correcting instructions by the trial court. *R. L. Smith v. United States* (D.C. App. 1974, 315 A. 2d 163; cert. denied 95 S. Ct. 174, 419 U.S. 896).

Prosecutor's closing and rebuttal arguments which referred to defenses of insanity interposed by famous defendants in other cases and to actions of Hitler and Napoleon were improper and were so highly prejudicial as to require reversal. *United States v. W. E. Hawkins* (1973, 480 F. 2d 1151, 156 U.S. App. D.C. 259).

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and was convicted of second-degree murder, would also be nullified. *Id.*

Search and seizure

Where police officers proceeded to area where gunshots were heard, where they were told "they went down the street in a red car," where officers observed red car traveling without lights within three or four blocks of such location, and where they observed occupants acting as if they were hiding something, officers acted properly in stopping car and ordering occupants out of it, thereby giving one officer opportunity to be in position to obtain plain view of shotgun and pistol. *G. S. Crawley v. United States* (D.C. App. 1974, 314 A. 2d 487).

Where police officers had reason to believe that revolver used by defendant charged with assault with a dangerous weapon might be concealed in defendant's truck and

that bags of pastry and eyeglasses left behind by victims who had successfully escaped from the truck were also in the truck, warrantless search of the truck following arrest of defendant was lawful, and thus evidence seized in such search was admissible. *United States v. A. E. Bowles, Jr.* (D.C. App. 1973, 304 A. 2d 277).

Sentence

Imposition of consecutive sentences for assault with a dangerous weapon and carrying a dangerous weapon is proper, notwithstanding that offenses arose out of the same transaction, since offense of carrying a dangerous weapon requires proof that the weapon was unlicensed while offense of assault with a dangerous weapon does not. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A.2d 140).

Convictions arising from separate indictments handed down on same date can not be relied on to enhance punishment as third offender. *D. L. Washington v. United States* (D.C. App. 1975, 343 A. 2d 560).

Defendant's assault on child with a dangerous weapon, namely, a belt, and his assault on the same child the following night with a dangerous weapon, namely, a pliers, were two separate offenses, and the trial court's imposition of consecutive sentences for them was within the area of its permissible discretion. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Where defendant had been convicted of assault with intent to kill armed with dangerous weapon, with sentence of from three to nine years, for assault with dangerous weapon, with concurrent two to six-year sentence, and carrying pistol without license, with concurrent one-year sentence, two to six-year sentence would be vacated on appeal, without remand. *United States v. E. T. Wimbush* (1973, 475 F. 2d 347, 154 U.S. App. D.C. 236).

Sentence of ten years' imprisonment, and refusal to commit defendant to institution for treatment of sexual psychopathy, did not constitute cruel and unusual punishment of defendant after conviction of sodomy and assault with dangerous weapon. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Trial judge's statement that it was almost inconceivable that youth, who had been convicted of two counts of assault with a dangerous weapon, and one count of carrying a dangerous weapon, could be handled under Federal Youth Corrections Act in view of his prior convictions of armed robbery and assault with dangerous weapon, his extensive juvenile record and fact that he had repeatedly absconded from juvenile correctional facilities constituted a sufficient affirmative on-the-record finding that youth would not benefit from treatment under the Act and trial judge's refusal to sentence youth under the Act was within his discretion. *L. T. Paul v. United States* (D.C. App. 1973, 301 A. 2d 226).

Imposition of separate convictions and consecutive sentences for assault with dangerous weapon was improper where defendant, by single act, put in fear four different members of a group toward whom his actions were collectively directed. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Separate offenses

Evidence sustained determination that assaults with dangerous weapons upon persons other than bank tellers, committed in connection with bank robbery, were separate assaults rather than a single group assault. *United States v. E. L. Cooper* (1974, 504 F. 2d 260, 164 U.S. App. D.C. 191).

Where by a single act or course of action a defendant has put in fear different members of a group toward which the action is collectively directed, he is guilty of but one offense and multiple convictions and consecutive sentences will be appropriate only where distinct, successive assaults have been omitted upon the individual victims. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Severance

Issue of whether severance should have been granted after codefendant testified in such manner as to negate

planned joint defense was not preserved for appeal, where no motion was made to trial court upon which it could have exercised its discretion to grant a severance, and where defendant did not demonstrate any prejudice occasioned by his codefendant's testimony which would justify a holding of plain error in allowing the joint trial to proceed. *W. J. Edwards, Jr. v. United States* (D.C. App. 1974, 328 A. 2d 90).

Speedy trial

Where most delay was attributable to Government's successful interlocutory appeal on motion to suppress evidence, where there was release on recognizance and defendant's irrational actions contributed materially to delay in setting of trial date and there was no prejudice to conduct of defense, and where, after motion to suppress was resolved, there was further delay of only four to five months prior to date set by judge, with consent of counsel, for trial, there was no denial of speedy trial. *United States v. M. H. Rosenbloom* (1974, 511 F.2d 777, 167 U.S. App. D.C. 211).

Fifteen-month delay between arrest and trial was such as to constitute a denial of defendant's right to a speedy trial where delay was not, at all times, attributable to defendant, who suffered personal prejudice by reason of fact that he was confined throughout period, though he continually pressed his motion for release pending trial, and where personal prejudice resulting from pretrial incarceration was exacerbated by fact that defendant was a youth being confined in an adult jail and fact that defendant was especially handicapped by his social and educational background. *United States v. W. H. Calloway* (1974, 505 F. 2d 311, 164 U.S. App. D.C. 204).

Thirteen months' delay between arrest and trial did not deny defendants their right to speedy trial where first seven months' delay was at least partially justifiable, one defendant was incarcerated only during that portion of period between arrest and trial in which delay was justifiable and longer period that other defendant spent in pretrial detention was attributable to fact that, having been released pending trial, he violated conditions of release and was reincarcerated. *United States v. E. L. Cooper* (1974, 504 F. 2d 260, 164 U.S. App. D.C. 191).

Right to speedy trial of defendant, charged with armed robbery, assault with dangerous weapon, and of carrying a pistol without a license, was not impinged by nine-month delay extending from his indictment to his trial where, during the first two months defendant was still at large and police were doing their best to locate him, where defendant did not press a speedy trial right until five months after he was arrested, and where record was sufficient to sustain finding that defendant suffered no prejudice to his defense which could be attributed to the delay at the postarrest stage of the prosecution. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Verdict

In prosecution for armed robbery and for assault with a dangerous weapon, trial court did not erroneously permit jury to return a separate verdict on assault with a dangerous weapon charge, where evidence disclosed that after armed robbery of cash register of store defendant forced victim at gunpoint to walk to rear of store where she was searched and on leaving defendant warned victim about possibility of being shot if she came out before defendant got out of store. *G. W. Bates v. United States* (D.C. App. 1974, 327 A. 2d 542).

Fact that jury acquitted defendant on charge of carrying a dangerous weapon did not require them to find defendant not guilty on charge of assault with deadly weapon. *F. C. Winters v. United States* (D.C. App. 1974, 317 A. 2d 530).

Witnesses

Failure of trial court to admit into evidence prior inconsistent statement of a witness, after witness did not deny its truth, was error, but such error was not prejudicial where the inconsistent statement was read in whole by the witness to the jury and was used extensively by defense counsel in cross-examination. *C. A. Jefferson v. United States* (D.C. App. 1974, 328 A. 2d 85).

Prior inconsistent statement is admissible only to impeach credibility of a witness and may not be used as affirmative proof of its contents. *Id.*

Evidence that defendant's sole defense witness had been charged with obstruction of justice for her alleged efforts to persuade complaining witness not to identify codefendant, her brother, should not have been admitted over objection, in prosecution for assault and armed robbery, to impeach witness, where testimony of complaining witness revealed to jury facts which were basis for charge; prejudicial effect of admission of arrest and charge outweighed probative substance. *United States v. C. Maynard* (1973, 476 F. 2d 1170, 155 U.S. App. D.C. 223).

Competency of mentally retarded 18-year-old prosecutrix to testify in prosecution for assault with intent to commit rape while armed, assault with a dangerous weapon and carrying a dangerous weapon, was a threshold question of law committed to the trial court's discretion; it remained for the jury, however, to assess credibility of the witness and the weight to be given her testimony. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

§ 22-504. Assault or threatened assault in a menacing manner.

NOTES TO DECISIONS

Cause for arrest

Police officer who had interviewed alleged assault victim and concluded that his complaint, to the effect that accused had pointed a gun at him and threatened to kill him, was genuine, had probable cause to believe that an armed assault had taken place and that accused had committed it, and in light of the exigent nature of the circumstances had probable cause to arrest accused without an arrest warrant. *United States v. H. Simpson* (D.C. App. 1975, 330 A.2d 756).

Cross-examination

In prosecution for simple assault and obstructing justice, limiting cross-examination of complaining witness on issues of his credibility and bias is not abuse of discretion. *C. W. Hall v. United States* (D.C. App. 1975, 343 A.2d 35).

Evidence—Admissibility

In prosecution for assault and threats to do bodily harm, admission of defendant's prior conviction of manslaughter was not error, where at time prior conviction was introduced and during final instructions trial court informed jury that it should consider the conviction only in evaluating defendant's credibility. *W. B. Davis v. United States* (D.C. App. 1974, 313 A. 2d 886).

Merger of offenses

Simple assault is not a lesser included offense of obstruction of justice and thus charge of simple assault does not merge into accused's conviction of obstruction of justice. *C. W. Hall v. United States* (D.C. App. 1975, 343 A.2d 35).

Prosecutor's comments

Prosecutor's allusion, in simple assault case, to complainant's belief that he was coming to court for defendant's sentencing, rather than his retrial, was not necessary to an effective rebuttal of defense counsel's insinuations and was therefore improper, but, viewing the trial as a whole, including the weight of the Government's case against defendant, it could not be said that the judgment of the jury against defendant was substantially swayed by the error. *F. S. Medina v. United States* (D.C. App. 1974, 315 A. 2d 169).

Search and seizure

Police, who had learned of armed assault committed by accused, and, who, before entering accused's apartment, heard close of squeaky door, were entitled to make an arrest and effect a limited search for weapons incident thereto, for their own safety, and .38 revolver found in stove which was readily accessible to the three people in the room was admissible against the accused, subsequently identified by the victim, even though the accused was a functional cripple and was not arrested until the pistol had been seized. *United States v. H. Simpson* (D.C. App. 1975, 330 A.2d 756).

§ 22-505. Assault on member of police force or fire department.

NOTES TO DECISIONS

Abuse of discretion

Where action of government in regard to missing disciplinary report describing alleged assault on correctional officer for which defendant was being prosecuted did not amount to bad faith and did not rise to level of gross negligence but simply amounted to negligence, failure to apply sanction under Jencks Act (18 U.S.C. 3500) in striking testimony of correctional officer, who made report, and ordering new trial is not abuse of discretion. *H. B. Johnson v. United States* (D.C. App. 1975, 336 A.2d 545; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Consecutive sentences

Trial court did not err in imposing consecutive sentences for separate assaults on two groups of police officers, one group of which was initially at scene and the other group of which arrived just before the shooting began. *A. C. Fletcher v. United States* (D.C. App. 1975, 335 A.2d 248).

Construction

This section, proscribing interfering with member of police force operating in District of Columbia, proscribing assaulting district employee charged with supervision of juveniles confined in district facility located within District or elsewhere and proscribing assaulting member of fire department operating in District, contains three different "laws," within meaning of section 11-923 providing that Superior Court has jurisdiction of any criminal case under any law applicable exclusively to District; thus Superior Court has jurisdiction of prosecution for assault on police officer in District, even if that Court has no jurisdiction over prosecution for assault on supervisor of confined juvenile on ground that it is an extra-territorial offense. *United States v. I. C. Thompson et ano.* (D.C. App. 1975, 347 A. 2d 581).

This section making it unlawful to assault, without justifiable and excusable cause, any officer of any penal or correctional institution does not contemplate a level of conduct measurably different from simple assault. *H. B. Johnson v. United States* (D.C. App. 1972, 298 A. 2d 516).

Elements of offense

Fact that defendant knew or should have known that complainants were police officers is an element of offense of assault on a police officer with a dangerous weapon. *A. C. Fletcher v. United States* (D.C. App. 1975, 335 A.2d 248).

Evidence

Evidence sustained conviction for assault on police officer while armed with dangerous weapon. *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

— Admissibility

Spectrographic identification of defendant as maker of telephone call to which police officer was responding when shot was not sufficiently accepted by scientific community as a whole to form a basis for a jury's determination of guilt or innocence, and was inadmissible. *United States v. R. Addison* (1974, 498 F. 2d 741, 162 U.S. App. D.C. 199; aff'g 337 F. Supp. 641).

Erroneous admission of testimony based on spectrogram or so-called "voice print" analysis did not fatally infect jury's verdict and did not require a reversal, in light of overwhelming evidence of guilt. *Id.*

Defendant's statement to epidemiologist, after epidemiologist had assisted in subduing defendant following attack on correctional officer and in response to epidemiologist's inquiry as to why defendant had attacked officer, that defendant had nothing to lose as he was a lifer was admissible in prosecution for assault on correctional officer and of assaulting and interfering with officer. *E. L. Smith v. United States* (D.C. App. 1974, 318 A. 2d 891).

Inferences

Evidence that defendant fired at police officers at close range before they drew their guns, knowing them to be

police officers, would support inference that defendant acted with specific intent to kill. *A. C. Fletcher v. United States* (D.C. App. 1975, 335 A.2d 248).

Instructions

Where police officers testified that they arrived at apartment in response to disorderly conduct complaint, that they were confronted by defendant who was kicking at the door and yelling profanities, that they placed her under arrest, which she resisted violently, that she broke away and obtained a knife, and that she advanced on the officers, requiring them to draw their guns and seek reinforcements to subdue her, and where defendant testified that she had not threatened any officer with a knife but had herself been attacked by the officers, defendant is not entitled to an instruction on self-defense. *C. L. Holt v. United States* (D.C. App. 1975, 340 A.2d 827).

Jurisdiction

This section, proscribing interfering with member of police force operating in District of Columbia, proscribing assaulting district employee charged with supervision of juveniles confined in district facility located within District or elsewhere and proscribing assaulting member of fire department operating in District, contains three different "laws," within meaning of section 11-923 providing that Superior Court has jurisdiction of any criminal case under any law applicable exclusively to District; thus Superior Court has jurisdiction of prosecution for assault on police officer in District, even if that Court has no jurisdiction over prosecution for assault on supervisor of confined juvenile on ground that it is an extra-territorial offense. *United States v. I. C. Thompson et ano.* (D.C. App. 1975, 347 A. 2d 581).

Lesser included offense

Assault on a correctional officer was a lesser included offense of assault on a correctional officer while armed and conviction for the former could not stand in face of conviction of the latter. *E. L. Smith v. United States* (D.C. App. 1974, 318 A. 2d 891).

Plain error

Permitting clinical psychologist to testify about a psychiatric diagnosis reached at a staff conference which he did not attend did not constitute plain error in view of fact that no attempt was made to introduce any staff conference report nor were any further references made to substance of staff conference recommendation either in direct or cross-examination and Government produced as a second witness a psychiatrist whose opinion, for which he gave reasons, also was that defendant was not mentally ill. *E. L. Smith v. United States* (D.C. App. 1974, 318 A. 2d 891).

In prosecution for carrying a dangerous weapon, assaulting a police officer, and unlawful possession of narcotic drug, sustaining as valid Fifth Amendment privilege claimed by defense witness called to corroborate testimony of defendant, who did not claim infringement of his own Fifth Amendment privilege against self-incrimination, was not plain error, on theory that he was denied a fair trial, where there was no pretense the record would support an inference of prosecutorial misconduct or that Government's case was buttressed by the witness' exercise of the privilege against self-incrimination, and where witness was called by defense counsel with full prior knowledge that privilege would be invoked. *R. W. Mack v. United States* (D.C. App. 1973, 310 A. 2d 234).

Prosecutor's remarks

Trial court did not err in refusing to give curative instruction after prosecutor suggested, in closing argument, that defendant may have carried his pistol prior to the incident in question with intent of using it to commit a crime since that statement was a proper rebuttal to defense counsel's argument that defendant had been carrying the gun to defend himself and that the government had failed to show any motive for the shooting and, in addition, court subsequently instructed jury that arguments of counsel are not evidence. *A. C. Fletcher v. United States* (D.C. App. 1975, 335 A.2d 248).

Any error in allowing government to comment, in closing argument, on failure of the defendant to call one of his companions, who was present at scene, is harmless,

notwithstanding that court had denied government's request for a missing witness instruction, where challenged remarks were limited to observation that such individual had not testified and did not directly urge jury to draw from that fact an adverse inference and defendant had previously explained that he had not attempted to secure such witness because he did not believe that the witness would be willing to incriminate himself. *Id.*

Refusal to declare a mistrial after prosecuting attorney stated in his summation that assaulting a correctional officer was basically no different from regular assault did not constitute error. *H. B. Johnson v. United States* (D.C. App. 1972, 298 A. 2d 516).

Speedy trial

Where most delay was attributable to Government's successful interlocutory appeal on motion to suppress evidence, where there was release on recognizance and defendant's irrational actions contributed materially to delay in setting of trial date and there was no prejudice to conduct of defense, and where, after motion to suppress was resolved, there was further delay of only four to five months prior to date set by judge, with consent of counsel, for trial, there was no denial of speedy trial. *United States v. M. H. Rosenbloom* (1974, 511 F.2d 777, 167 U.S. App. D.C. 211).

§ 22-506. Mayhem or maliciously disfiguring.

NOTES TO DECISIONS

Evidence—Admissibility

Golf club used in beatings was properly admitted into evidence in prosecution for, inter alia, malicious disfigurement, where complainant, who shared apartment with defendant, consented to warrantless search of the apartment. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

Admitting colored photographs of complainant showing scars on upper portion of her body was not an abuse of discretion, in prosecution for, inter alia, assault with a dangerous weapon and malicious disfigurement, where photographs were not inflammatory and were clearly probative of the condition of complainant's body and, thus, were material on issue of malicious disfigurement. *Id.*

Insanity defense

Where defendant, indicated for sodomy, assault with dangerous weapon and mayhem, neither raised defense of insanity prior to return of jury verdict of guilty nor brought to court's attention prior imprisonment for sex-related crime or attempted suicide while in prison and confinement there for psychiatric treatment, defendant had not been improperly deprived of defense of insanity during trial. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Lesser included offense

Since evidence showed that offenses arose out of separate acts no need existed to consider whether assault with a dangerous weapon was a lesser included charge of malicious disfigurement. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

§ 22-507. Threats to do bodily harm.

NOTES TO DECISIONS

Construction

This section making it unlawful for one to threaten to do bodily harm does not require that threats be communicated directly to the threatened individual. *J. N. Gurley v. United States* (D.C. App. 1973, 308 A. 2d 785).

Evidence—Admissibility

In prosecution for assault and threats to do bodily harm, admission of defendant's prior conviction of manslaughter was not error, where at time prior conviction was introduced and during final instructions trial court informed jury that it should consider the conviction only in evaluating defendant's credibility. *W. B. Davis v. United States* (D.C. App. 1974, 313 A. 2d 886).

— Sufficiency

Evidence was sufficient to sustain conviction for threatening to do bodily harm of defendant whose threats were overheard by police officer and not by the intended vic-

tim. *J. N. Gurley v. United States* (D.C. App. 1973, 308 A. 2d 785).

Chapter 7.—BRIBERY—OBSTRUCTING JUSTICE

§ 22-701. Definition and penalty.

NOTES TO DECISIONS

Search and seizure

Where defendant asserted on redirect examination that he was no longer addicted to narcotic drugs and had not possessed such drugs during month of his arrest, testimony regarding packages of cocaine obtained from defendant at time of his arrest by means of illegal seizure is admissible for purposes of impeachment. *L. A. Cowan v. United States* (D.C. App. 1975, 331 A.2d 323).

§ 22-702. Offering or receiving money, property, or valuable consideration to procure office or promotion from District of Columbia Commissioners.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-703. Obstructing justice.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Cross-examination

In prosecution for simple assault and obstructing justice, limiting cross-examination of complaining witness on issues of his credibility and bias is not abuse of discretion. *C. W. Hall v. United States* (D.C. App. 1975, 343 A.2d 35).

Elements of offense

It is not necessary to establish that an assault has been committed in order to prove a violation of this section, proscribing one from corruptly, by threats or force, endeavoring to influence, intimidate or impede any witness in the discharge of his duties; acts such as blackmail and unfulfilled threats of violence can support an obstruction of justice charge. *C. W. Hall v. United States* (D.C. App. 1975, 343 A.2d 35).

Estoppel

After accused was acquitted of a threat to do bodily harm and bribery and jury "hung" on charge of obstruction of justice, Government is not collaterally estopped from retrying accused on charge of obstruction of justice on theory that verdict of not guilty on "threats" charge determined the issue with respect to identical threats alleged in obstruction of justice charge. *United States v. L. M. Smith* (D.C. App. 1975, 337 A.2d 499).

Evidence—Sufficiency

Evidence in prosecution for obstructing justice and simple assault is sufficient to support a finding that alleged assault was intended to prevent further cooperation of the complaining witness in a criminal case. *C. W. Hall v. United States* (D.C. App. 1975, 343 A.2d 35).

Indictment

Indictment, which alleged, inter alia, that accused "corruptly endeavored * * * to influence, intimidate and impede" specified victim "in the discharge of his duties as a witness," implies, with sufficient clarity, knowledge that victim was a witness and in intent to impede witness in furtherance of his duties and such indictment sufficiently charges offense of obstruction of justice. *C. W. Hall v. United States* (D.C. App. 1975, 343 A.2d 35).

Merger of offenses

Simple assault is not a lesser included offense of obstruction of justice and thus charge of simple assault does not merge into accused's conviction of obstruction of justice. *C. W. Hall v. United States* (D.C. App. 1975, 343 A.2d 35).

Chapter 9.—DOMESTIC RELATIONS

§ 22-901. Cruelty to children.

NOTES TO DECISIONS

Abuse of discretion

In prosecution of defendant on charges of cruelty to a child and assault with a dangerous weapon, namely, a belt, the trial court did not abuse its discretion in permitting the government to introduce, during its direct case, evidence of defendant's prior conviction of having assaulted the same child, where intent was placed clearly in issue by the contention in defendant's opening statement that an assault episode, involving the child's head being struck by a pliers tossed by defendant, was accidental. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Elements of offense

In prosecution on charges of cruelty to child and assault with a dangerous weapon, namely, a belt, intent was an essential element of the offenses and hence had to be proved by the Government beyond a reasonable doubt. *K. Robinson v. United States* (D.C. App. 1974, 317 A.2d 508).

Evidence—Admissibility

In prosecution on charges of cruelty to a child and assault with a dangerous weapon, prior assault by defendant on the same child, which occurred some 17 months earlier, was not too remote to preclude its receipt in evidence on the question of intent. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Evidence as to defendant's prior assault on the same child unquestionably was relevant as to whether he had the requisite intent to support verdicts finding him guilty of the charges of cruelty to a child and assault with a dangerous weapon, namely, a belt. *Id.*

In prosecution for murder, deceased's prior conviction based on plea of guilty to an indictment that charged that deceased did "beat, abuse and otherwise willfully maltreat" his six-year-old son was admissible to prove deceased's violent character and court's barring of the evidence was improper. *United States v. J. H. Burks* (1972, 470 F. 2d 432, 152 U.S. App. D.C. 284).

—Sufficiency

Defendant's action in holding child under shower in such a manner as to cause child to fight for air, and in repeatedly slapping and kicking the child after removing him from the shower, supported verdict of guilty on charge of cruelty to a child, irrespective of fact that child was also beaten with a belt and defendant was also convicted of assault with a dangerous weapon. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Instructions

Evidence required to warrant "intoxication-defense" instruction must reveal such a degree of complete drunkenness that a person is incapable of forming the necessary intent essential to commission of crime charged. *C. G. Smith, Sr. v. United States* (D.C. App. 1973, 309 A. 2d 58).

Where only evidence as to defendant's alleged intoxication came from defendant who testified that although he "had been drinking" he was not "dead drunk," evidence failed to warrant giving of requested instruction on issue of intoxication as bearing upon specific intent to commit charged offense of cruelty to children. *Id.*

Plain error

In prosecution for cruelty to a child and assault with a dangerous weapon, it was not plain error for the trial judge to read to the jury evidence of defendant's prior guilty plea to a charge of assault involving the same child. *K. Robinson v. United States* (D.C. App. 1974, 317 A. 2d 508).

Chapter 11.—DISORDERLY CONDUCT

§ 22-1107. Unlawful assembly—Profane and indecent language.

NOTES TO DECISIONS

Arrest—Probable cause

Arrests, during mass demonstrations, of persons predicated solely on the profanity of the arrestee, without a showing of likelihood of inciting violence, were without probable cause and thus unlawful. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F. Supp. 186).

Police officer who, while walking his beat in an area considered high in narcotic traffic, noticed defendant and two other young men standing in the shadows of a building, who observed that their hands were "passing and changing" among them, who crossed the street to investigate whereupon defendant began to walk away rapidly, who called out "I would like to talk with you a minute," in response to which defendant, within the earshot of pedestrians, shouted a four-letter expletive and ran, had probable cause to arrest defendant for disorderly conduct; thus, the ensuing search for weapons incident to the arrest, which search yielded a bag of heroin, was likewise lawful. *W. Von Sleichter v. United States* (1972, 472 F. 2d 1244, 153 U.S. App. D.C. 169; aff'g 267 A. 2d 336; cert. denied 93 S. Ct. 555, 409 U.S. 1063).

Construction

Disorderly conduct statute is not applicable for mere use of indecent or obscene words, but only if the language is, under contemporary community standards, so grossly offensive to members of the public who actually overhear it as to amount to a nuisance. *W. Von Sleichter v. United States* (1972, 472 F. 2d 1244, 153 U.S. App. D.C. 169; aff'g 267 A. 2d 336; cert. denied 93 S. Ct. 555, 409 U.S. 1063).

Elements of offense

Simply talking back to a policeman does not justify an arrest for disorderly conduct. *W. Von Sleichter v. United States* (1972, 472 F. 2d 1244, 153 U.S. App. D.C. 169; aff'g 267 A. 2d 336; cert. denied 93 S. Ct. 555, 409 U.S. 1063).

Search and seizure

While disorderly conduct is a crime without physical evidence or fruits, a policeman apprehending the possibility of danger may conduct a search incident to a lawful arrest for disorderly conduct for the purpose of discovering and removing weapons, and may command the person arrested to place his hands where they can be seen. *W. Von Sleichter v. United States* (1972, 472 F. 2d 1244, 153 U.S. App. D.C. 169; aff'g 267 A. 2d 336; cert. denied 93 S. Ct. 555, 409 U.S. 1063).

§ 22-1112. Lewd, indecent, or obscene acts.

NOTES TO DECISIONS

Arrest—Notification of employer

Although trial court properly dismissed informations charging violations of statute making it unlawful to commit a lewd, obscene and indecent act on theory that statute was unconstitutionally vague, order purporting to enjoin police department from notifying employers of fact of arrest of an employee for other sex offenses until "formal charges" had been filed, when there was no person before the court who had sustained a direct injury as a result of the notification policy, was an abuse of discretion. *District of Columbia v. H. Walters et al.* (D.C. App. 1974, 319 A. 2d 332; cert. denied 95 S. Ct. 650, 419 U.S. 1065).

Constitutionality

"Sexual proposal" clause of this section providing that it shall be unlawful for any person to make any lewd, obscene, or indecent sexual proposal may be fairly construed to proscribe only proposals to commit sodomy, indecent exposure, or, in case of sexual proposals addressed to children, to perform some sexual act, and as so construed is not so vague as to amount to deprivation of due process of law. *District of Columbia v. A. Garcia* (D.C. App. 1975, 335 A.2d 217).

Advocacy of sodomy as socially beneficial, and solicitation to commit sodomy, present entirely distinguishable

threshold questions in terms of First Amendment freedom of speech; the latter is not protected speech. *Id.*

This section is not unconstitutional as applied to proposals to commit consensual sexual acts in private where, while sexual proposal made by defendant to officer was made in apparent privacy of parked automobile, it is clear from stipulated facts in the record that officer was not a "consenting person." *Id.*

Statute making it an offense to commit a lewd, obscene and indecent act is unconstitutionally vague in failing to give clear notice of what conduct is forbidden and in investing police with excessive discretion to decide, after the fact, who has violated the law, and statute could not be sustained on theory that police department practice supported construction of statute to mean the deliberate touching in public of one's own or another's genitals for purpose of sexual arousal or on theory that the indelicacy of the subject matter excused the failure to spell out precisely the acts covered. *District of Columbia v. H. Walters et al.* (D.C. App. 1974, 319 A. 2d 332; cert. denied 95 S. Ct. 650, 419 U.S. 1065).

Statute making it unlawful to commit a lewd, obscene and indecent act was unconstitutionally vague as applied to defendants who were arrested inside a commercial establishment "engaging in acts of mutual masturbation." *Id.*

Construction

Of the various forms of sexual conduct prohibited by statute, such as adultery, indecent exposure, incest, fornication, seduction, indecent liberties with children, and sodomy, only sodomy, indecent exposure, and indecent sexual acts with children can reasonably be deemed "lewd, obscene or indecent," within meaning of this section, with the result that "sexual proposal" clause of this section can be fairly construed to prohibit only proposals to commit sodomy, indecent exposure, or in the case of sexual proposals with children, to perform some sexual act. *District of Columbia v. A. Garcia* (D.C. App. 1975, 335 A.2d 217).

Elements of offense

Words used in cases under this section may or may not be obscene in themselves; what matters is that sexual acts proposed are lewd, obscene or indecent and lawfully prohibited by statute, not the character of the particular words in which the proposal is framed. *District of Columbia v. A. Garcia* (D.C. App. 1975, 335 A.2d 217).

Trial

Where reviewing court was unable to conduct meaningful review of the record because of the frequency and manner of the trial court's intrusions into the interrogation of the witnesses in nonjury trial, the trial did not meet minimum standards for the administration of criminal justice and conviction would not be permitted to stand. *F. L. Shannon v. United States* (D.C. App. 1974, 319 A. 2d 135).

§ 22-1115. Interference with foreign diplomatic and consular offices, officers, and property.

NOTES TO DECISIONS

Construction

Second, third and fourth prohibitions of this section come into play only where there is a display of a flag, banner, placard, or device designed or adapted to produce one or more of the several consequences specified in those provisions; these demonstrative elements are essential, and speech alone is not prohibited. *S. Zaimi v. United States* (1973, 476 F. 2d 511, 155 U.S. App. D.C. 66; rev'g 261 A. 2d 233).

Evidence—Sufficiency

Defendant, who shouted inter alia, that Shah of Iran had come to Washington to purchase bombs to suppress people of Iran, could not be properly convicted of violating statute making it unlawful to bring into public disrepute any officer of any foreign government within 500 feet of any building used or occupied by foreign government or its representatives for official purposes, where there was no congregating, and where banner which defendant at one time carried was never displayed. *S. Zaimi v. United States* (1973, 476 F. 2d 511, 155 U.S. App. D.C. 66; rev'g 261 A. 2d 233).

Offenses

Under this section making it unlawful to bring into public disrepute any officer of any foreign government within 500 feet of any building used or occupied by foreign government or its representatives for official purposes, an offense is not committed simply by utterances unaccompanied by a congregating or a display of a flag, banner, placard, or other device which is designed or adapted to accomplish an end which the section undertakes to forbid. *S. Zaimi v. United States* (1973, 476 F. 2d 511, 155 U.S. App. D.C. 66; rev'g 261 A. 2d 233).

§ 22-1121. Disorderly conduct—Generally.**NOTES TO DECISIONS****Construction**

When this section is construed to prohibit police from ordering persons in a demonstration to move on unless a breach of the peace is threatened or intended and so as to require an officer to consider the presence of a substantial risk of violence in determining whether a breach of the peace has occurred or will occur, it may be constitutionally enforced against persons arrested in demonstrations. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F.Supp. 186).

Enforcement

Police department's practice of improperly using police lines and sweeps and invocation of failure-to-move-on provision of this section in a manner which maximized chance of arresting persons who were innocent of any wrongdoing did not constitute the least restrictive means available to accomplish limited objective of regulating the demonstrations and are thus improper. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F.Supp. 186).

§ 22-1122. Rioting or inciting to riot—Penalties.**NOTES TO DECISIONS****Construction**

With the exception of requirement that five persons participate, this section's prohibition against riot or inciting to riot is intended to subsume all aspects of the common-law crime. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, —U.S. —).

This section is sufficiently comprehensive to cover disturbance which occurred at District of Columbia jail when inmates attempted to escape and held certain persons hostage and attacked and beat them. *Id.*

"Riot" is a breach of the peace which causes public terror and which is committed by an unlawful assembly of the stated number of persons, in the case of the District of Columbia, five. *Id.*

It is a "breach of the peace" when acts or threats of violence cause consternation and alarm and thus disturb the tranquility of the citizens or of a community, threatening their security and invading the protection which the law affords to every citizen. *Id.*

Elements of offense

Location of a disturbance is immaterial to the determination of whether it fits the statutory definition of riot; riot may take place in a penitentiary or in a military camp. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, —U.S. —).

Terror inflicted by rioting inmates on director of corrections department whom they held hostage and whom they continually beat and assaulted, to the point where he, at one time, asked them to kill him rather than to continue to torture him, satisfied "public disturbance" requirements of this section. *Id.*

Evidence—Admissibility

Since evidence that homosexual rapes were perpetrated by rioting inmates on hostages was indispensable in proving allegation of serious bodily harm for purpose of this section, testimony concerning sexual assaults on one of the hostages was properly admitted over objections that prejudicial effect outweighed its probative value; evidence was admissible although government also al-

leged that the riot in question had resulted in property damage and section refers to riot involving property damage or serious bodily harm in the alternative. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, —U.S. —).

— Sufficiency

Disturbance at District of Columbia jail in which several inmates attempted to escape and in which numerous persons were held hostage, in which many of the hostages were beaten and sexually assaulted, which resulted in media coverage with several hundred members of the public congregated outside, forcing the police to surround the jail and block the streets around it, involved sufficient "public terror" to constitute violation of this section. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, —U.S. —).

Testimony by prison guards that they were locked in a cell and held as hostages, that defendant frequently checked the cell where the guards were confined, that he told the guards that he "had nothing to lose by going out looking," that defendant separated himself from a group of inmates who did not want to escape immediately before rebellious inmates clustered for breakout attempt, and that defendant thereafter came by the cell many times armed with a short piece of steel with a sharp end and threatened the hostages was sufficient to sustain defendant's convictions for attempted escape, armed kidnapping, robbery, and riot. *Id.*

Chapter 12.—EMBEZZLEMENT**§ 22-1211. Taking property without right.****NOTES TO DECISIONS****Evidence**

Where defendant removed automobiles, which either had valid license tags or were virtually undamaged and could not therefore have reasonably have been regarded as abandoned, from parking lot under authorization by property managers, who did not have authority to contract with defendant for removal of such vehicles, defendant had no right to tow away such automobiles and thus was properly found guilty of taking property without right. *L. R. Fogle, Sr. v. United States* (D.C. App. 1975, 336 A.2d 833).

Chapter 14.—FORGERY—FRAUDS**§ 22-1401. Forgery.****NOTES TO DECISIONS****Cross-examination**

Defendant charged with uttering forged bank checks was entitled to cross-examine principal government witness to determine whether on plea of guilty to same charge witness had entered into agreement with Government for favorable recommendation in regard to his sentence in exchange for his testimony. *C. E. McCoy v. United States* (D.C. App. 1973, 301 A. 2d 218).

Evidence—Admissibility

Codefendant's statement to arresting officer, to effect that defendant had given codefendant check in question, was admissible in uttering prosecution in which codefendant testified and affirmed statement and was subjected to cross-examination. *J. Q. Ellsworth v. United States* (D.C. App. 1973, 300 A. 2d 456).

Evidence that codefendant had told arresting officer that defendant had given codefendant check in question was not hearsay in uttering prosecution, where used not to prove truth of matter asserted but to corroborate codefendant's testimony and rebut inference of recent fabrication, and defendant was not entitled to instruction that statement could be used only in determining codefendant's guilt, although defendant would have been entitled to cautionary instruction limiting use of evidence to corroboration and rebutting inference. *Id.*

— Sufficiency

Evidence that defendant, owner of a detective agency, gave employees forged special police officer commissions,

and that detective agency received more income from its customers because of use of such commissions, was sufficient to justify submitting to jury counts accusing defendant of forgery. *J. D. Payton, Jr. v. United States* (D.C. App. 1973, 305 A. 2d 512).

Evidence, in prosecution for forging or uttering a forged document, that credit card taken from robbery victim was used to procure gasoline and services from filling stations, that automobile license recorded on sales slips coincided with registration of defendant's car and that it was highly probable that handwriting on the slips was that of defendant made admissible case. *H. M. Long v. United States* (D.C. App. 1972, 298 A. 2d 213).

Fair trial

Where Government's case in prosecution for forgery, uttering and receiving stolen property rested on documents and unchallenged identification of accused, seven-month nondeliberate delay between date of such offenses and accused's arrest did not deprive accused of fair trial in violation of due process, notwithstanding contentions that if accused had been charged more promptly, he might have remembered what he was doing when he was accused of being in certain shop and could have located "former marine buddy" who assertedly accompanied accused to a second shop. *G. Hurt v. United States* (D.C. App. 1974, 314 A. 2d 489).

Indictment

Indictment charging defendant with uttering forged checks was fatally defective for failure to allege that defendant had knowledge that checks were forged. *D. Rosser v. United States* (D.C. App. 1973, 307 A. 2d 752).

Instructions

Where no evidence was adduced as to identity of forger, court erred in giving aiding and abetting instruction. *J. D. Payton, Jr. v. United States* (D.C. App. 1973, 305 A. 2d 512).

Joinder

Joinder of receiving stolen property count with forgery and uttering counts was not prejudicial misjoinder where all counts related to offenses at certain shop, where evidence on all counts was sufficient for jury and where, though evidence was elicited as to accused's use of stolen credit card at another shop, such evidence was probative as corroborative of handwriting evidence and limiting instruction was given. *G. Hurt v. United States* (D.C. App. 1974, 314 A. 2d 489).

Sentence

When the trial court imposes adult punishment on a youth offender the record (1) must show that the sentencing judge was aware of defendant's eligibility for Youth Act treatment before imposing adult sentence and (2) must contain an explicit and reasoned determination that defendant would not derive rehabilitative benefit from Youth Act treatment. *C. D. Small v. United States* (D.C. App. 1973, 304 A. 2d 641).

Sentence of youthful offender to term of imprisonment on conviction of forgery was required to be vacated and case remanded for resentencing where explicit and reasoned determination that defendant would not derive benefit from Youth Act treatment was absent from the record. *Id.*

§ 22-1411. Fraudulent advertising.

NOTES TO DECISIONS

Construction

This section making unlawful the publication of false advertising does not punish only a course of conduct but punishes each publication of a false advertisement. *J. Green et ano. v. United States* (D.C. App. 1973, 312 A. 2d 788; cert. denied 95 S. Ct. 45, 419 U.S. 827).

Evidence—Sufficiency

Evidence was sufficient to support finding in prosecution for publishing fraudulent advertising about sewing machines for sale that defendant who admitted he was in charge of advertising for sewing machines caused fraudulent advertising to be inserted in newspaper. *J. Green et ano. v. United States* (D.C. App. 1973, 312 A. 2d 788; cert. denied 95 S. Ct. 45, 419 U.S. 827).

Separate offense

Each daily publication of fraudulent advertising about sewing machines for sale in newspaper during 60-day period was properly treated as a separate offense of publishing fraudulent advertising. *J. Green et ano. v. United States* (D.C. App. 1973, 312 A. 2d 788; cert. denied 95 S. Ct. 45, 419 U.S. 827).

§ 22-1412. Prosecution under section 22-1411.

NOTES TO DECISIONS

Jurisdiction

Superior Court has jurisdiction over prosecution of defendant publishing fraudulent advertising in newspaper. *J. Green et ano. v. United States* (D.C. App. 1973, 312 A. 2d 788; cert. denied 95 S. Ct. 45, 419 U.S. 827).

Prosecution

Proceeding by way of indictment charging defendant with 60 counts of publishing fraudulent advertising was not error. *J. Green et ano. v. United States* (D.C. App. 1973, 312 A. 2d 788; cert. denied 95 S. Ct. 45, 419 U.S. 827).

§ 22-1413. Penalty under section 22-1411.

NOTES TO DECISIONS

Sentence

Sentence provided for in written judgment finding defendant guilty of 60 counts of publishing fraudulent advertising was not invalid because trial court in its oral pronouncement of sentence did not use words "for each" count, where court did state orally "all counts to run consecutively." *J. Green et ano. v. United States* (D.C. App. 1973, 312 A. 2d 788; cert. denied 95 S. Ct. 45, 419 U.S. 827).

Chapter 15.—GAMBLING

§ 22-1501. Lotteries—Promotion—Sale or possession of tickets.

NOTES TO DECISIONS

Evidence—Sufficiency

Evidence that defendant and others had been observed going from stores to parked automobile and handing small pieces of white paper and money to occupant of automobile, that pieces of paper were recognized by officer as "numbers slips," that paper bag which defendant had placed behind trash can was recovered and found to contain numbers slips and that numbers slips, gambling paraphernalia and money were recovered from parked automobile is sufficient to sustain convictions of being concerned in a lottery and of possession of lottery tickets. *United States v. F. E. Loundmannz* (1972, 472 F. 2d 1376, 153 U.S. App. D.C. 301; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Probable cause for arrest

Where one police officer, through binoculars, observed defendant exiting from stores, walking to automobile and handing small pieces of white paper and money to occupant and other persons carrying on same type of activity in vicinity and then went to within three to five feet of parked automobile and observed several of the other persons pass money and slips which he recognized as "numbers slips" to occupant of automobile, there was probable cause for arrest of defendant pursuant to radio orders given to arresting officers by officer who had observed defendant and the other persons. *United States v. F. E. Loundmannz* (1972, 472 F. 2d 1376, 153 U.S. App. D.C. 301; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

§ 22-1502. Possession of lottery or policy tickets.

NOTES TO DECISIONS

Evidence—Sufficiency

Evidence that defendant and others had been observed going from stores to parked automobile and handing small pieces of white paper and money to occupant of automobile, that pieces of paper were recognized by officer as "numbers slips," that paper bag which defendant had placed behind trash can was recovered and found to contain numbers slips and that numbers slips, gambling paraphernalia and money were recovered from parked automobile is sufficient to sustain convictions of being concerned in a lottery and of possession of lottery tickets.

United States v. F. E. Loundmannz (1972, 472 F. 2d 1376, 153 U.S. App. D.C. 301; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Probable cause for arrest

Where one police officer, through binoculars, observed defendant exiting from stores, walking to automobile and handing small pieces of white paper and money to occupant and other persons carrying on same type of activity in vicinity and then went to within three to five feet of parked automobile and observed several of the other persons pass money and slips which he recognized as "numbers slips" to occupant of automobile, there was probable cause for arrest of defendant pursuant to radio orders given to arresting officers by officer who had observed defendant and the other persons. *United States v. F. E. Loundmannz* (1972, 472 F. 2d 1376, 153 U.S. App. D.C. 301; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

§ 22-1505. Gambling premises—Definition—Prohibition against maintaining—Forfeiture—Liens—Deposit of moneys in Treasury—Penalty—Subsequent offenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Evidence—Sufficiency

Evidence not objected to was sufficient to support finding that money seized in execution of search warrant was the product of an illegal activity. *E. A. Short v. District of Columbia* (D.C. App. 1973, 300 A. 2d 450).

Forfeiture—Hearing

Fact that in preliminary hearing stage a judge of the District of Columbia Court of General Sessions had discharged defendant on basis of suppressibility of evidence due to unlawful execution of search warrant did not foreclose District of Columbia from a hearing in libel action aimed at property seized during execution of the warrant inasmuch as only legal issue before judge at preliminary hearing was question of probable cause to hold defendant for action of grand jury and preliminary hearing judge was not competent to decide question of admissibility of seized evidence. *District of Columbia v. C. Ray, Jr.* (D.C. App. 1973, 305 A. 2d 531).

Determination of federal district court, on motion to suppress in prior criminal action, that search warrant was illegally executed did not foreclose District of Columbia from a hearing on legality of the seizure in libel action aimed at money and equipment seized during execution of the search warrant; rather, the Congressional mandate that the District of Columbia should have status in libel action precluded Court of the District from fashioning such a quasi-collateral estoppel rule. *Id.*

Trial by jury

Claimant of property, which was not per se unlawful and which was sought to be forfeited pursuant to statute authorizing forfeiture of property used or to be used in gambling enterprise, was entitled to trial by jury to decide issue whether property was illegally employed. *W. B. Carithers v. District of Columbia* (D.C. App. 1974, 326 A. 2d 798).

§ 22-1506. Three-card monte and confidence games.

NOTES TO DECISIONS

Construction

"Three-card monte" statute does not apply to commission of classic "short con" game known as "pigeon drop." *J. Pender v. United States* (D.C. App. 1973, 310 A. 2d 252).

Three-card monte statute can not be applied for purpose of prosecuting the obtaining of money by trick. *J. A. Bond v. United States* (D.C. App. 1973, 310 A. 2d 221).

Conduct of defendant, in two-man scheme procuring money from victim to place in envelope, with subsequent substitution of envelope for another containing newspaper clippings, was not violative of this section prescribing confidence game known as "three-card monte" and any other such games or swindles. *T. Mozelle v. United States* (D.C. App. 1973, 310 A. 2d 213).

Since the thrust of this section prescribing penalty for practicing the confidence game known as three-card monte "or any other confidence game, play, or practice" is against gambling, the doctrine of ejusdem generis is controlling and the general language "any other confidence game, play, or practice" must be limited in application to gambling activities similar to "three-card monte." *United States v. D. L. Brown et ano.* (D.C. App. 1973, 309 A. 2d 256).

Under the doctrine of "ejusdem generis," where general words follow the enumeration of specific classes of persons or things, the general words will be construed as applicable only to the persons or things of the same general nature or class as those enumerated. *Id.*

Elements of offense

The elements of the crime of "confidence game" are (1) an intentional false representation to the victim as to some present fact, (2) knowing it to be false, (3) with intent that the victim rely on the representation, (4) the representation being made to obtain the victim's confidence and thereafter his money and property, (5) which confidence is then abused by defendant. *United States v. D. L. Brown et ano.* (D.C. App. 1973, 309 A. 2d 256).

Indictment

Indictments charging that defendants practice a confidence game and swindle the nature of which was to persuade victim to entrust money to defendants, which money defendants allegedly intended to fraudulently convert to their own use, did not sufficiently state the elements of the offense called the "confidence game or swindle known as three-card monte." *United States v. D. L. Brown et ano.* (D.C. App. 1973, 309 A. 2d 256).

Prosecution

Though denominated a misdemeanor by this section, prescribed penalty of up to five years imprisonment made offense of "three-card monte and confidence games" prosecutable only by indictment. *United States v. D. L. Brown et ano.* (D.C. App. 1973, 309 A. 2d 256).

Since the "three-card monte" statute deals with gambling, it is not a proper vehicle for prosecuting other forms of fraud or deceit. *Id.*

§ 22-1510. Penalty for bucketing or keeping bucket-shop.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-1515. Presence in illegal establishments.

NOTES TO DECISIONS

Search and seizure

Where on executing warrant authorizing search of after-hours club or bar for a "gaming table and other related gambling paraphernalia," police officers knocked twice and announced they were police officers with a search warrant, after hearing someone run away from the door, officers waited approximately 30 seconds and then forced door open and from previous observations police had probable cause to believe that extensive gambling was being carried on, police had sufficient grounds to search the individuals present and tinfoil packet found on in-depth search of an occupant was properly seized and would be admissible in prosecution for possession of heroin; officers had reasonable cause to believe that occupants possessed, concealed and were about to remove or destroy evidence for which they had a search warrant. *United States v. W. Miller* (D.C. App. 1972, 298 A. 2d 34).

Chapter 16.—GAME AND FISH LAWS

- § 22-1628. Council's authority with respect to wild animals, fishing licenses, and migratory birds—Exception—"Wild Animals" defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

- § 22-1629. Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

- § 22-1630. Seizure of hunting and fishing equipment by police officer—Return of seized property upon acquittal—Forfeiture of seized property upon conviction and sale at public auction—Disposal of proceeds of sale—Disposal of property not sold at auction—Payment of valid liens after sale of seized property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

- § 22-1632. Delegation of functions by Secretary of Interior and Commissioner—Council authorized to make regulations subject to approval of Secretary of Interior where they involve areas under his jurisdiction—Definition of "Commissioner" and "Secretary of Interior" for purposes of chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

- § 22-1633. Existing authority of Secretary of Interior not impaired to control and manage fish and wild-life on land and waters in District under his jurisdiction.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 17.—HARBOR REGULATIONS

- § 22-1701. Harbor regulations—Authority vested in Council to make—Federal approval if affecting navigable waters—Parks and waterfront—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Mooring

Mooring barge lengthwise under span of highway bridge over Potomac river so that it occupied 93 feet of a 133-foot wide passage violated Harbor Regulation of the District of Columbia Code requiring that moored vessel be secured so as to keep long axis of vessel parallel with that of the channel. *E. S. Petersen et al. v. Head Construction Company* (1973, 367 F. Supp. 1072).

- § 22-1702. Throwing or depositing matter in Potomac River.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 18.—BURGLARY

- § 22-1801. Burglary—Penalties.

CROSS REFERENCE

Unlawful entry, see § 22-3102.

NOTES TO DECISIONS

Adequate assistance of counsel

Where during 45-day interval between defendant's arrest and his rearrest he was free on his own recognition and in a position to assist counsel in locating necessary witnesses, where after his rearrest he remained free on bond until his arraignment approximately a month later, and where there was no reasonable explanation of counsel's failure to seek defendant's assistance in finding defense witnesses during this period, trial judge's failure to comply with mandate of the Court of Appeals with respect to amount of bond did not deprive defendant of effective assistance of counsel. *M. A. Hampton v. United States* (D.C. App. 1975, 340 A.2d 813).

It is not denial of effective assistance of counsel for defendant's trial counsel to make a conscientious decision not to put on alibi testimony which, after investigation, he is convinced would be perjured. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

Appeal and error

Failure to give standard instruction on identification in prosecution for burglary was not prejudicial error where identification was not a telling issue. *R. Massey v. United States* (D.C. App. 1974, 320 A. 2d 296).

Consent to entry

Even if entry against will of occupants was required for first-degree burglary in District of Columbia, there was vitiation of consent and thus entry against will of occupants, where consent to enter was obtained by use of pretense, subterfuge, misrepresentation and concealment. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

Construction

Common-law crime of burglary has been replaced by statutory crime, denominated first-degree burglary, in the District of Columbia, and the common-law crime no longer exists. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

Convictions—Mutually exclusive

Convictions of second defendant for burglary and grand larceny were mutually exclusive with conviction for receiving stolen property and bringing it into the District of Columbia, and vacating the burglary and larceny convictions which carried longer sentences cured any prejudice which resulted from the failure to properly instruct. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Cross-examination

Refusal, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to permit cross-examination of accomplice, who testified for government and whose counsel had been informed that government would be willing, with regard to unrelated narcotics and robbery charges against accomplice, to accept plea of guilty to one misdemeanor, as to whether government had made any disposition of such unrelated charges was reversible error when considered in conjunction with other errors. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Defendant's absence during trial

Defense counsel's tactical decision not to let complainant see defendant before trial at suppression hearing is binding upon defendant and waiver of his presence at hearing does not constitute reversible error. *A. L. Fludd v. United States* (D.C. App. 1975, 336 A.2d 539).

Defenses

Under this section defining burglary as entry without breaking with intent to commit any criminal offense, consent to enter is not defense where one is shown to have entered with the requisite criminal intent. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

Discovery

With the exception of records of impeachable convictions, the criminal records and records of arrests of government witnesses were not discoverable and the suppression of the testimony of government witnesses, as sanction for disobedience of pretrial discovery order, was in excess of trial court's authority. *United States v. W. C. Engram et ano.* (D.C. App. 1975, 337 A.2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Double jeopardy

Where trial court, acting on good faith but erroneous belief that defendant had been entitled to certain information long before trial, first suggested continuance, which was declined by defendant, and then unsuccessfully sought defendant's consent to mistrial, and finally declared mistrial and discharged jury, without any insistence by defendant upon any right to completion of the trial by the first jury, jeopardy did not attach. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A. 2d 465; cert. denied 96 S. Ct. 1751, — U.S. —).

Elements of offense

First-degree burglary, an offense against habitation, is completed when individual enters occupied dwelling with intent to commit criminal offense. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A.2d 746).

Neither the unlawful entry statute nor the forcible entry statute engrafts any additional elements on first-degree burglary statute of the District of Columbia; unlawful entry statute does not purport to amend burglary statutes and does not do so by operation of law, expressly or impliedly, nor do requirements of unlawful entry statute constitute additional elements of every second-degree burglary. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

It is not necessary to burglary conviction that the theft or crime intended at time of entry be consummated. *R. Massey v. United States* (D.C. App. 1974, 320 A. 2d 296).

Element that distinguishes burglary from unlawful entry is the intent to commit crime once unlawful entry has been accomplished. *United States v. T. Melton, Jr.* (1973, 491 F. 2d 45, 160 U.S. App. D.C. 252).

While burglary does not include element of breaking or force, offense of forcible entry does. *Id.*

Proof of larceny does not, in itself, establish burglary. *H. L. White v. United States* (D.C. App. 1973, 300 A. 2d 716).

Where defendant was not present at government building when actual theft of equipment occurred, he could only be convicted of theft of government property and second-degree burglary as an aider and abettor. *United States v. W. J. Barlow, Jr.* (1972, 470 F. 2d 1245, 152 U.S. App. D.C. 336).

Evidence—Admissibility

In burglary prosecution, Confrontation Clause of Sixth Amendment barred admission of officer's rebuttal

testimony as to defendant's companion's out-of-court statement that he was with defendant for only five minutes. *United States v. R. E. Yates* (1975, 524 F.2d 1282, 173 U.S. App. D.C. 308).

Where, in prosecution for burglary of jewelry store, after prosecutor's introduction of evidence that store owner did not have insurance, court ruled that the evidence was not relevant and should be stricken from the record and gave cautionary instruction to the jury, defendant was amply protected from hazard of impermissible influence and the question and answer do not constitute such plain error as to require reversal. *C. R. Manago v. United States* (D.C. App. 1975, 331 A.2d 335).

Testimony by accomplices as to statements which were made to them by defendant during commission of crimes charged in prosecutions for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary and which incriminated codefendants, were admissible under either exception to hearsay rule for contemporaneous declarations which partake of the event or exception for spontaneous declarations of excited utterances. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Error, if any, in introduction into evidence of recordings between since deceased accomplice-informer and first defendant was not reversible error, in prosecution for conspiracy, burglary, grand larceny, interstate transportation of stolen property and bringing stolen property into the District of Columbia. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Admission into evidence of recorded conversations between since deceased accomplice-informer and first defendant which contained references to second defendant in joint trial did not violate second defendant's rights under the confrontation clause. *Id.*

Introduction in evidence in joint trial of recordings of conversation between first defendant and since deceased accomplice-informer was not improper on ground that recordings, which were made outside the presence of counsel, denied defendants' right to counsel. *Id.*

Government informer's suicide note, written six days prior to suicide, and which contained language exculpating second defendant, was not within the dying declaration hearsay rule exception where the note was not made with belief that death was imminent and did not concern the cause or circumstances of what was believed to be impending death. *Id.*

Accomplice-informer's handwritten suicide note, which contained language exculpating second defendant, was not admissible as declaration against the informer's penal interest where there was no corroboration of the exculpatory statement. *Id.*

Where codefendants denied actual knowledge of the stolen contents of two boxes with which they were connected, rebuttal evidence relating to prior suspicious acts not charged in indictment was properly admitted on question of intent or absence of mistake; since codefendants were only charged as aiders and abettors, with respect to the theft of government property and second-degree burglary counts such testimony was appropriately admitted to establish possible common scheme or plan whereby codefendants might be directly connected with the actual perpetrator of the crime; testimony of codefendants rendered evidence of prior suspicious activity of sufficient probative value in rebuttal to overcome possible prejudicial effect. *United States v. T. E. Fench* (1972, 470 F. 2d 1234, 152 U.S. App. D.C. 325; cert. denied 93 S. Ct. 964, 410 U.S. 909).

— Disclosure to defense

Where matter which prosecution had not disclosed prior to trial of indictment is inadmissible hearsay, i.e., a street rumor which remained unverified despite immediate investigation by police detective, and where detective did not abandon investigation until after positive identification of defendant had been made by principal victim and defendant had confessed to the crime, undisclosed information is not kind of material which prosecution should have furnished defendant in advance of trial. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A.2d 465; cert. denied 96 S. Ct. 1751, — U.S. —).

— Hearsay

Where evidence clearly established defendant's guilt of burglary and petit larceny of grocery store, admission in evidence of hearsay testimony of proprietor of store that he had heard that defendant had stolen his keys to store was not substantial or prejudicial error. *P. T. Fredericks v. United States* (D.C. App. 1973, 306 A. 2d 268).

— Sufficiency

Evidence was not sufficient to support convictions for arson, second-degree burglary while armed with a Molotov cocktail and possession of a Molotov cocktail. *United States v. L. S. Carter* (1975, 522 F.2d 666, 173 U.S. App. D.C. 54).

In proceeding in which accused was convicted of burglary and grand larceny and in which accused's fingerprint in burglarized house was assertedly the only evidence linking accused to the offenses, evidence satisfies government's burden of negating the most reasonable explanations under which such fingerprint evidence would be consistent with innocence and of showing that fingerprint was made during commission of the offenses. *In re M. M. J.* (D.C. App. 1975, 341 A.2d 421).

Evidence, in prosecution for burglary of jewelry store, is sufficient to support conviction of defendant who, at 4:00 a.m., was seen by officers hastily running from window in vacant building through which burglars had gained access to jewelry store and who was apprehended in the possession of several pieces of jewelry, all identified as having been taken from the store. *C. R. Manago v. United States* (D.C. App. 1975, 331 A.2d 335).

Evidence that defendant made early morning forcible entry into bar and grill, prepared to carry away items of value, and attempted to conceal his actions inside the premises was sufficient on element of entry with intent to steal to make submissible case of second-degree burglary. *R. Massey v. United States* (D.C. App. 1974, 320 A. 2d 296).

Burglary conviction was sustained by evidence including testimony that defendant and codefendant were first seen about five feet from place of breaking and entry, in the middle of the night, that bags which appeared to have been hastily filled with merchandise were there, that officers saw defendant and codefendant running side by side and testimony that defendant gave two conflicting explanations for his presence at scene together with evidence that defendant as retail dealer had recently purchased goods from the burglarized wholesale firm which had then refused him more credit and that goods stolen would have had actual value only to one in retail business. *B. D. Forsyth v. United States* (D.C. App. 1974, 318 A. 2d 292).

Where there was no evidence of a breaking or evidence placing defendant within building, fact that defendant was in possession of recently stolen goods belonging to business did not establish burglary II. *H. L. White v. United States* (D.C. App. 1973, 300 A. 2d 716).

Evidence, including evidence that defendant's fingerprints were found on both sides of pane of glass removed from back door to apartment and that prints were found on surface of glass covered by molding strips which secured window in door, were sufficient to sustain determination that defendant was person who entered complainant's apartment. *United States v. J. E. Cary* (1972, 470 F. 2d 469, 152 U.S. App. D.C. 321).

Evidence was sufficient to support convictions of first-degree burglary and of assault with a deadly weapon despite claim that, absent corroborating evidence, testimony of complaining witness alone could not support findings of guilt. *United States v. R. Carmichael* (1972, 469 F. 2d 937, 152 U.S. App. D.C. 197).

Where evidence disclosed a single act on part of defendant directed simultaneously at two persons, so that only a single conviction for assault on two persons was supported by evidence, convictions of first-degree burglary and of one assault would be affirmed, but conviction of an additional assault would be set aside, and sentences would be vacated and case would be remanded for resentencing. *Id.*

— Suppression

When, within minutes of a reported early morning burglary, officers came upon defendant in an area proximate to scene of crime, wearing clothing which effec-

tively fit the description given police by complaining witness, officers had probable cause to arrest, and thus, irrespective of voluntary nature of defendant's return to the scene, trial judge is not required to suppress either identification testimony of complainant or clothing worn by defendant at time of arrest. *M. A. Hampton v. United States* (D.C. App. 1975, 340 A.2d 813).

Identification

Where witness did not have opportunity to see the face of the large man outside liquor store at close range because witness was watching from an eighth floor window, but the parking lot outside the liquor store was illuminated, the witness did observe the man's general facial features, the cut of his hair, the shape of his head, his race, his height and his build and only 20 to 25 minutes elapsed between the crime and the identification, the on-the-scene identification procedures were permissible. *B. I. Nichols v. United States* (D.C. App. 1975, 343 A.2d 336).

Witness's identification of the defendant's clothes as identical to those worn by driver of automobile observed at burglary scene was not impermissibly suggestive because the defendant was observed alone in patrol wagon where witness had had two opportunities to view the driver's clothes both before and after the burglar alarm was activated, the identification occurred only 20 to 25 minutes after the second time witness saw the clothes and the witness identified the defendant's uniform rather than the defendant himself. *Id.*

Defendant's convictions of first-degree burglary, grand larceny, and malicious destruction of property were not supported by sufficient evidence, where, despite the complainant's testimony that he was able to identify defendant at showup because the image of defendant's face was implanted on his mind, the complainant was unable to identify defendant at trial, where his opportunity to observe the burglars was brief, where he saw them at night under artificial light, where his nearest observation of them was when they were running and 17 feet away, and where there was a significant discrepancy in almost all respects between the description given by complainant to the police and defendant's actual description, both physically and in respect to clothing. *W. B. Crawley v. United States* (D.C. App. 1974, 320 A. 2d 309).

In determining whether out-of-court identification was improper, one must look to totality of circumstances surrounding it; only if procedure followed was so impermissibly suggestive as to give rise to very substantial likelihood of misidentification must testimony concerning the out-of-court identification be held inadmissible. *M. E. Conyers v. United States* (D.C. App. 1973, 309 A. 2d 309).

— In-court

Refusal to suppress in-court identification testimony of burglary eyewitness, who had observed man in hallway close to scene of crime making his way into scene of crime as burglar alarm sounded and then, carrying two paper bags, emerging into the hallway and leaving the premises, and who selected photograph of defendant from among 13 shown her by police 12 hours later, on theory that witness' view of defendant while sitting in courtroom prior to trial, during extended bench conference with respect to defendant's representation, irreparably tainted her in-court identification, was not error. *C. J. Brown v. United States* (D.C. App. 1974, 327 A. 2d 539).

Failure of burglary eyewitness, who had observed man in hallway close to scene of crime making his way into scene of crime as burglar alarm sounded and then, carrying two paper bags, emerging into hallway and leaving the premises, and who selected photograph of defendant from among 13 shown by police 12 hours later, to attend lineup did not render her in-court identification testimony inadmissible. *Id.*

— Lineup

Record discloses that lineup identification was not tainted by any suggestive photographic identification procedure or by police officer's subsequent remark to complainant that person whose photograph he had selected had been driver of car which complainant had stated he saw suspicious person drive away in. *A. L. Fludd v. United States* (D.C. App. 1975, 336 A.2d 539).

— Photographic

Fact that defendant's clothes in photographic display somewhat resembled clothes which robbery victim said armed robber wore does not render the photographic display impermissibly suggestive in view of total number of pictures, 150, and number of men of comparable age and appearance in the array. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

Even if procedure followed in photographic identification process was suggestive because defendant's picture was placed last in book of approximately 50 others, it was not so unduly suggestive as to raise substantial likelihood of irreparable misidentification and does not warrant reversal of conviction. *A. L. Fludd v. United States* (D.C. App. 1975, 336 A.2d 539).

Impeachment

Refusal to rule on whether defendant's prior conviction of attempted house breaking was an impeachable one is improper, but error is harmless, in that since such conviction was admissible for impeachment purposes, defendant's decision whether to testify would have been same if trial judge had expressly ruled on its admissibility. *M. A. Hampton v. United States* (D.C. App. 1975, 340 A.2d 813).

Defendant was properly impeached by use of prior inconsistent statement given by him to representative of District of Columbia Bail Agency in the prosecution of offense for which the Bail Agency statement was given. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

Refusal, in criminal prosecution, to admit testimony regarding effect of drug use on perception for purposes of impeaching testimony of accomplice, who testified for government and who was a heroin user, unless it was established that accomplice had used narcotics on day of offenses was not error. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Inferences

Giving of instruction that jurors were permitted to infer that second defendant was "guilty of the crimes charged," if they determined, beyond a reasonable doubt, that he was found in unexplained, exclusive possession of recently stolen property was reversible error where the presumed fact of guilt of arson, possession of a Molotov cocktail and second-degree burglary while armed with a Molotov cocktail did not flow from possession of recently stolen military rifles. *United States v. L. S. Carter* (1975, 522 F.2d 666, 173 U.S. App. D.C. 54).

Due process would not be violated by permitting jury to infer from a defendant's possession of recently stolen property that defendant intended to commit an offense at the time of his unlawful entry into building. *Id.*

Fact of unlawful entry, even in the nighttime, may not support inference that entry was made with intent to steal. *United States v. T. Melton, Jr.* (1973, 491 F. 2d 45, 160 U.S. App. D.C. 252).

Where there was no proof of burglary, possession of recently stolen property could not give rise to inference respecting commission by possessor of burglary. *H. L. White v. United States* (D.C. App. 1973, 300 A. 2d 716).

Crime of burglary requires, inter alia, breaking or entering without breaking and such must be established before an inference from possession of recently stolen property may properly be indulged to establish defendant's guilt of burglary. *Id.*

Instructions

There was no plain error in instructions on specific intent required for first-degree burglary even though instructions could have been more expansive on "specific intent" where instructions were not objected to at trial. *United States v. P. G. Thornton* (1974, 498 F. 2d 749, 162 U.S. App. D.C. 207).

Failure to give an accomplice instruction with regard to accomplices who testified for government was not plain error where nonaccomplice testimony corroborated accomplice testimony to significant extent against one accused and to lesser extent against another and where accomplices did not appear to have extraordinary disposition to prevaricate. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Refusal to instruct that testimony of accomplices, who testified for government after having been granted im-

munity, should be considered with caution was reversible error. *Id.*

Absent waiver of instruction, failure, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to give immediate limiting instruction as to admissibility where testimony of arresting officer was admitted to impeach defendant's testimony that he had not stated that codefendant "lived across the street" was plain error requiring reversal, though general instruction on impeachment evidence was given in very long charge. *Id.*

Instruction that jury could infer from the unexplained or unsatisfactorily explained possession of stolen money orders that defendants were guilty of taking such money orders, that defendant's possession of the recently stolen property did not shift burden of proof and that Government always had burden of proving beyond reasonable doubt every essential element of offense did not place burden on defendants, alone, to testify and explain satisfactorily their possession of stolen money orders. *United States v. J. M. Joyner* (1974, 492 F. 2d 650, 160 U.S. App. D.C. 384; cert. denied 95 S. Ct. 94, 419 U.S. 852).

Jury instruction that if jury found beyond reasonable doubt that defendant had committed acts which constituted essential elements of crimes charged, then he must be found guilty, was equivalent to trial judge directing verdict of guilty, and was plain error. *S. Watts v. United States* (D.C. App. 1974, 328 A. 2d 770).

In prosecution based on defendants' unconsented entry into offices of chemical company and their destruction of certain property in it, instruction that Vietnam war was not issue in case and that, if government proved beyond reasonable doubt that one or more of defendants committed elements of crimes charged, law does not recognize as defense that defendants were motivated to commit their acts by sincere political, religious or moral convictions or in obedience to some higher law was not improper despite contention that instructions were coercive, tantamount to directed verdict of guilty and outside proper scope of judicial instruction. *United States v. M. R. Dougherty* (1972, 473 F. 2d 1113, 154 U.S. App. D.C. 76).

Instructions with respect to identification in prosecution for burglary, rape, and robbery was sufficient for circumstances of case wherein complaining witness did not identify defendant but identity was established from fingerprint evidence. *United States v. J. E. Cary* (1972, 470 F. 2d 469, 152 U.S. App. D.C. 321).

Intent

Proof that accused entered premises armed and disguised as woman and accompanied by another man who also carried concealed firearm, that they both obtained consent to their entry under pretext and, as soon as money appeared on game table, accused and his companion whipped out their guns, robbed occupants and fled sustained finding that when accused entered apartment, he possessed criminal intent required by this section. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

An intent to steal or commit a crime at the time of entry is a requisite element of proof in burglary case. *R. Massey v. United States* (D.C. App. 1974, 320 A. 2d 296).

Circumstances which together with unauthorized presence in another's premises will support inference of entry with criminal purpose need not include the actual commission of a crime within the premises but are such as might lead reasonable people, based upon common experience, to conclude beyond a reasonable doubt that the accused possessed the requisite intent. *Id.*

Where there was complete absence of any evidence of an intent to commit crime after unlawful entry, defendant could not be found guilty of first-degree burglary and it was error to submit such charge thereby inviting jury to speculate on why defendant entered dwelling. *United States v. T. Melton, Jr.* (1973, 491 F. 2d 45, 160 U.S. App. D.C. 252).

Jencks Act

Although trial court was required by Jencks Act to direct prosecution to produce notes taken by prosecutor during interview with witness on morning of trial, trial court's refusal to so order is harmless error and does not prejudice defendant where evidence from sources other

than such witness overwhelmingly indicates defendant's guilt. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A. 2d 301).

Joinder

Joinder of counts concerning second-degree burglary, grand larceny, and attempted burglary, was not improper. *L. P. Coleman v. United States* (D.C. App. 1972, 298 A. 2d 40; cert. denied 93 S. Ct. 3070, 413 U.S. 921).

Jury question

In prosecution for theft of government property and second-degree burglary, whether defendant had aided and abetted the larceny by assisting in continuing asportation of property he knew had been stolen was jury question. *United States v. W. J. Barlow, Jr.* (1972, 470 F. 2d 1245, 152 U.S. App. D.C. 336).

Jury was properly permitted to find guilty participation in burglary from defendant's exclusive possession of recently stolen property. *Id.*

Merger of offenses

Armed robbery, committed after burglary, is not lesser included offense of first-degree burglary or an offense co-extensive with first-degree burglary but an offense separate and distinct from burglary so that defendant can be convicted of both offenses. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A.2d 746).

Housebreaking and robbery convictions can stand together since robbery and burglary statutes which codify common law protect distinct societal interests. *C. M. Dixon, Jr. v. United States* (D.C. App. 1974, 320 A. 2d 318).

Plea bargaining

Where Government as part of plea bargaining only agreed to waive its statutory right of allocation at time of imposing of sentence for burglary, defendant did not have right to reasonably expect that Governments agreement not to allocute would extend to a hearing on his subsequent request that the imposed sentence be reduced and Government was entitled to submit information in opposition to motion to reduce. *M. L. Braxton v. United States* (D.C. App. 1974, 328 A. 2d 385).

Plea of guilty

Where prosecution in its opening statement had outlined overwhelming case against defendants, charged with burglary of political party headquarters, pleas were accepted only after extraordinarily elaborate procedure, stretching over four days, conducted largely in camera, and involving two competent attorneys, and neither counsel, prosecutor, nor judge exerted the slightest pressure on defendants to induce them to plead guilty, withdrawal of pleas would substantially prejudice legitimate prosecution interests, defendants were granted "use immunity" so that they might testify before grand jury and congressional committees and, at time of plea, defendants had denied employment by government intelligence agencies, defendants would not be entitled, eight months after pleading guilty, to withdraw their pleas because they honestly, though mistakenly, believed that "national security" considerations required their silence. *United States v. B. L. Barker* (1975, 514 F.2d 208, 168 U.S. App. D.C. 312; cert. denied 95 S. Ct. 2420, 421 U.S. 1013).

Where defendant charged with first-degree burglary tendered plea of guilty to lesser-included offense of unlawful entry, and trial judge was presented with a factual basis for the plea, plea should not have been refused simply because defendant refused to accompany his plea with an admission of guilt. *United States v. T. Gaskins* (1973, 485 F. 2d 1046, 158 U.S. App. D.C. 267).

Prearrest delay

Dismissal of charges against accused is not warranted merely on basis of his assertion that prearrest delay, which was slightly more than three months and with regard to which there had been some lack of diligence on part of police but no intentional delay, deprived him of his ability to present a defense because he could not recall his activities or whereabouts on night of the offenses. *In re M. M. J.* (D.C. App. 1975, 341 A.2d 421).

Probable cause

When, within minutes of a reported early morning burglary, officers came upon defendant in an area proximate to scene of crime wearing clothing which effectively fit the description given police by complaining witness,

officers had probable cause to arrest, and thus, irrespective of voluntary nature of defendant's return to the scene, trial judge is not required to suppress either identification testimony of complainant or clothing worn by defendant at time of arrest. *M. A. Hampton v. United States* (D.C. App. 1975, 340 A.2d 813).

Prosecutor's remarks to jury

Prosecutor's rebuttal argument which was to the effect that all of the evidence came from the Government, which did not mention defendant, which followed defense counsel's previous reminder to the jury that defendant did not testify, and which was not objected to, does not amount to plain error. *C. R. Manago v. United States* (D.C. App. 1975, 331 A.2d 335).

Failure of prosecutor to obtain permission of judge to comment on absence of witness whom defendant allegedly could have produced and whose testimony allegedly would have elucidated transaction in question, was error, but the error was rendered harmless by trial court's prompt instruction to jury to disregard prosecutor's remarks. *M. E. Conyers v. United States* (D.C. App. 1973, 309 A. 2d 309).

Remand

Where defendant's first-degree burglary conviction had to be set aside for lack of proof of intent to commit crime in premises entered but jury necessarily found facts required for conviction of lesser included offense of unlawful entry and the evidence was sufficient to support this determination, Court of Appeals would remand case with instructions to enter, if government consents, judgment of conviction of unlawful entry or, if court believes it in interest of justice, to grant new trial on lesser offense. *United States v. T. Melton, Jr.* (1973, 491 F. 2d 45, 160 U.S. App. D.C. 252).

Retrial, lesser included offense

Where the evidentiary failure relating to charge of second-degree burglary while armed with Molotov cocktail concerned only circumstance of defendant being armed, retrial of defendant, mandated on other grounds, could properly include lesser charge of second-degree burglary. *United States v. L. S. Carter* (1975, 522 F.2d 666, 173 U.S. App. D.C. 54).

Review—Record on appeal

Where there was nothing to indicate cause of delay between appointment of counsel on November 11, 1971 and status call on March 1, 1972, where there was no information concerning parole revocation proceedings involving defendant and Court of Appeals was left to speculate as to whether court-appointed counsel aided defendant in these proceedings and was therefore unable to avoid delay and where record did not indicate whether government's complaining witness, who was unavailable for March 17, 1972 trial date, was unavailable for entire period until August 31, 1972 trial, record was inadequate to determine whether defendant was denied his right to speedy trial, and record would be remanded for supplementation. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

Search and seizure

Warrantless search and seizure which occurred when police officer removed blanket from object which defendant had placed in public hallway while he went next door to make a telephone call and when officer copied serial number from object cannot be justified on basis of a suspicion or hunch on part of officer that a crime had been committed. *United States v. R. F. Boswell* (D.C. App. 1975, 347 A. 2d 270).

Police officer's brief observation of defendant carrying a blanket-covered object on street, proximity of defendant to object once he left it unattended in a public hallway, i.e., 20 to 30 feet, and reason for leaving object, i.e., to make a telephone call in an adjacent laundromat, do not reasonably allow an inference of an intent on part of defendant to abandon object and, thus, do not operate to preclude defendant from questioning legality of search and seizure which occurred when officer removed blanket and copied serial number from object. *Id.*

Where police officers on the scene at 5 a.m. had received eyewitness report of the commission of a burglary, corroborated by missing pane of glass near apartment door, and

had received positive identification of the perpetrator which included name and address, and where officers then received another eyewitness report from complainant that suspect was at that very moment in an apartment across the street, warrantless search of the latter apartment was justified by probable cause to believe that fleeing felon was within and by exigent circumstances which precluded obtaining an arrest warrant. *W. L. Dunston v. United States* (D.C. App. 1974, 315 A. 2d 563).

Sentence

Where concurrent sentences imposed on each conviction for assault with a dangerous weapon were adjudged to run concurrently with burglary and armed robbery convictions, no remand for resentencing was necessary on vacation of convictions for assault with a dangerous weapon. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

Severance

Refusal to grant severance in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, was not prejudicial to defendant due to fact that evidence placing a codefendant at scene of crime was quantitatively and qualitatively greater than evidence against defendant where evidence against defendant was both substantial and compelling, jury was specifically instructed to determine guilt of each defendant by considering only his own conduct and evidence which applied to him and where verdicts demonstrated that jury fulfilled its obligation under charge. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Fact that there was conflict in accused's defenses, in that codefendants relied on separate alibi defenses and defendant admitted his presence at scene of offenses and in that such defendants' efforts to discredit testimony that he and a codefendant knocked out victim assertedly undetermined such codefendant's alibi defense and fact that defendant did not testify and thus codefendants were precluded from cross-examining him did not so prejudice codefendants as to render refusal to grant severance an abuse of discretion where damaging implications of defendant's defense were corroborated by substantial testimony. *Id.*

Admission, in criminal prosecution in which a defendant did not testify, of admissible testimony as to such defendant's hearsay statements which incriminated codefendants did not require severance on ground that admission violated codefendants' right of confrontation where, even if codefendants were tried separately, such testimony would have been admissible and defendant probably would have invoked Fifth Amendment, where there was substantial other eyewitness testimony incriminating codefendants and where, since defendant was an accomplice, reliability of his hearsay declaration was "inevitably suspect." *Id.*

Where count of indictment charging defendant with carrying pistol on day of his arrest was dismissed for failure of proof before case was submitted to jury and indictment was retyped, omitting count, defendant was not prejudiced by court's refusal to sever such properly joined count from counts charging felony murder, first-degree burglary and armed robbery. *United States v. J. M. Joyner* (1974, 492 F. 2d 650, 160 U.S. App. D.C. 384; cert. denied 95 S. Ct. 94, 419 U.S. 852).

Trial court did not abuse its discretion in prosecution for conspiracy, burglary, grand larceny, interstate transportation of stolen property, and bringing stolen property into the District of Columbia by denying severance to second defendant on ground of antagonistic defenses. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Refusal to sever counts, in prosecution for second-degree burglary, grand larceny, and attempted burglary, was not an abuse of discretion where, *inter alia*, if there had been separate trials on each of the counts there would have been a substantial overlap of the evidence. *L. P. Coleman v. United States* (D.C. App. 1972, 298 A. 2d 40; cert. denied 93 S. Ct. 3070, 413 U.S. 921).

Speedy trial

Fifteen-month delay between arrest and trial was such as to constitute a denial of defendant's right to a speedy trial where delay was not, at all times, attributable to

defendant, who suffered personal prejudice by reason of fact that he was confined throughout period, though he continually pressed his motion for release pending trial, and where personal prejudice resulting from pretrial incarceration was exacerbated by fact that defendant was a youth being confined in an adult jail and fact that defendant was especially handicapped by his social and educational background. *United States v. W. H. Calloway* (1974, 505 F. 2d 311, 164 U.S. App. D.C. 204).

Delay of approximately 11 months between indictment and trial, which initially was caused by defendants' confusion of his counsel situation, and which thereafter was contributed to by combination of heavy calendar of the judge and the necessity of trying prior scheduled cases, the impossibility for a long period of securing attendance of complaining witness, judge's commitment to official duties, and to minor extent by the absence on vacation of defendant's counsel, was insufficient to constitute a denial of defendant's right to a speedy trial, in absence of any prejudice. *United States v. D. E. Douglas* (1974, 504 F. 2d 213, 164 U.S. App. D.C. 144).

Evaluating alleged deprivation of right to speedy trial requires a careful balancing in which conduct of both government and defendant are weighed; relevant factors include length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

Witnesses—Appointment of counsel

Where evidence indicates that two minor witnesses were innocent bystanders to burglary, and where witnesses were at all times willing to testify against defendant, defendant does not have standing to assert that trial court's refusal to appoint counsel for such minor witnesses before they testified was violation of witnesses' Fifth Amendment privilege against self-incrimination. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A.2d 301).

— Missing

If a party has it peculiarly within his power to produce witnesses whose testimony would elucidate transaction in question, fact that he does not do so creates presumption that testimony, if produced, would be unfavorable and comment by counsel and instruction by judge as to absent witnesses is permitted. *M. E. Conyers v. United States* (D.C. App. 1973, 309 A. 2d 309).

— Immunity

Provisions of Organized Crime Control Act requiring prosecutor to obtain authorization from Attorney General before granting immunity to witnesses who refuse to testify does not bar prosecutor's grant of immunity to minor witnesses who at no time refused to testify and who were merely innocent bystanders of burglary with which defendant was charged. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A.2d 301).

Chapter 20.—OBSCENITY

§ 22-2001. Certain obscene activities and conduct declared unlawful—Definitions—Penalties—Affirmative defenses—Exception.

NOTES TO DECISIONS

Community standards

Question of national standards of obscenity is matter of proof at trial. *F. P. Hermann v. United States* (D.C. App. 1973, 304 A. 2d 22).

Where Government rested after court viewed allegedly obscene film exhibited by defendants, and expert witness for defense then expressed opinion film did not violate contemporary national community standards, burden of proceeding shifted back to the Government to prove beyond a reasonable doubt a violation of contemporary national community standards. *Id.*

Obscenity per se relieves Government from offering any evidence of community standards to make a prima facie case. *Id.*

Construction

District of Columbia obscenity statute, using language similar to that used in federal statutes, is to be given same construction as the federal statute and is constitutional. *United States v. Sherpiz, Inc.* (1975, 512 F.2d 1361, 168 U.S. App. D.C. 121).

Although Court of Appeals was not presented with an authoritative construction of District of Columbia obscenity statute in view of the Miller decision, that is, that obscenity prosecution is limited to hard core sexual conduct specifically defined by the regulating state law, as written or construed, the Court would not undertake a definitive interpretation of the statute since it was convinced that the statute would receive a limiting construction that would maintain its application to the facts of the instant case. *United States v. T. E. Gower* (1974, 503 F. 2d 189, 164 U.S. App. D.C. 98; aff'g 316 F. Supp. 1390).

Elements of offense

Where at time of distribution and exhibition of allegedly obscene film by defendants a judicially declared test of obscenity was whether material was utterly without redeeming social value but, at the time of trial, court had revised test so as to require, for obscenity, only that the material lack serious literary, artistic, political or scientific value, defendants could be convicted only if material could be found to be obscene under both tests. *United States v. Sherpix, Inc.* (1975, 512 F.2d 1361, 168 U.S. App. D.C. 121).

Elements which must be proved before material or a performance can be found obscene are: appeal to a prurient interest in sex, utterly without redeeming social value, and violation of contemporary national community standards. *F. P. Hermann v. United States* (D.C. App. 1973, 304 A. 2d 22).

Although expert testimony would often substantially assist trial court determinations regarding obscenity as well as independent review on appeal, expert testimony is not required as matter of course to establish the elements on which material or a performance can be obscene. *Id.*

Evidence—Admissibility

Where a United States commissioner found probable cause to believe that suspect films were obscene and issued a search warrant prior to their seizure, promptly after execution of warrant the Government arranged a hearing before a district judge at which defendant was afforded opportunity to oppose the Government's obscenity claim, and defendants made no effort to resist the claim but instead disclaimed the proceeding, use of films as evidence at defendant's trial was not impermissible because no adversary hearing leading to an affirmative determination of obscenity was held before they were seized. *United States v. D. E. Pryba* (1974, 502 F. 2d 391, 163 U.S. App. D.C. 389; cert. denied 95 S. Ct. 815, 419 U.S. 1127).

— Of community standards

District Court in obscenity cases has wide discretion in its determination to admit and exclude evidence, and this is particularly true in case of expert testimony; although Government is not required to introduce expert testimony on community standards, defense should be free to introduce appropriate expert testimony, and summary exclusion of all testimony on community standards would thus be inappropriate. *United States v. Sherpix, Inc.* (1975, 512 F.2d 1361, 168 U.S. App. D.C. 121).

Hard-core pornography

Conviction of book sellers for violating District of Columbia obscenity statute by possession and sale of obscene photographs and films, which showed nude males and females engaged in explicit sexual intercourse, fellatio, cunnilingus and masturbation, was not required to be overturned in face of the Miller decision, that is, that obscenity prosecutions is limited to hard core sexual conduct specifically defined by the regulating state law, since reviewing court was convinced that the court-tried case would have reached exactly the same result if the case had been tried after Miller and had been conducted strictly in accordance with its instructions. *United States v. T. E. Gower* (1974, 503 F. 2d 189, 164 U.S. App. D.C. 98; aff'g 316 F. Supp. 1390).

In view of grave doubt as to whether "lesbian" pictures, which did not show ultimate sexual acts were violative of narrow and specific prohibitions that mark limit of constitutionality, elementary constitutional considerations precluded affirmance of conviction for violating indecent publication statute, where jury was not instructed

that it was its task, as surrogate for community, to determine whether there was depiction of sexual conduct to a point of patent offensiveness. *V. W. Huffman and D. E. Pryba v. United States* (1974, 502 F. 2d 419, 163 U.S. App. D.C. 417; rev'g and rem'g 259 A. 2d 342).

Intent to disseminate

Defendant enjoyed no immunity from prosecution for violation of this section outlawing possession of obscene matter with intent to disseminate by virtue of fact that only dissemination planned was a gift of copies of films to another. *United States v. D. E. Pryba* (1974, 502 F. 2d 391, 163 U.S. App. D.C. 389; cert. denied 95 S. Ct. 815, 419 U.S. 1127).

Obscene per se

Film that was sexually morbid, grossly perverse and bizarre, and wholly without any artistic or scientific justification was properly found to be obscene per se. *J. J. Kaplan v. United States* (D.C. App. 1971, 277 A. 2d 477; cert. granted, judgment vacated, and remanded 93 S.Ct. 3030, 413 U.S. 913; aff'd on remand 311 A. 2d 506; cert. denied 94 S. Ct. 3229, 418 U.S. 942).

Scienter

Defendant, who was working at downtown arcade on more than one occasion when obscene film was being displayed and who had ownership interest in the arcade, had requisite knowledge that the film being exhibited in particular machine was obscene. *J. J. Kaplan v. United States* (D.C. App. 1971, 277 A. 2d 477; cert. granted, judgment vacated, and remanded 93 S.Ct. 3030, 413 U.S. 913; aff'd on remand 311 A. 2d 506; cert. denied 94 S. Ct. 3229, 418 U.S. 942).

Search and seizure

Magistrate's determination of probable cause to seize allegedly obscene film was entitled to "great deference"; affidavit which was lengthy account of film, describing each scene in detail and with explicit language, furnished substantial basis for his decision, and seizure of film pursuant to the warrant was valid though magistrate did not personally view the film. *United States v. Sherpix, Inc.* (1975, 512 F.2d 1361, 168 U.S. App. D.C. 121).

Ex parte hearings may be properly used to grant warrants authorizing seizure of limited amounts of alleged obscene materials. *V. W. Huffman and D. E. Pryba v. United States* (1974, 502 F. 2d 419, 163 U.S. App. D.C. 417; rev'g and rem'g 259 A. 2d 342).

Since the search warrant for film contained in peep-show machine located in downtown arcade was issued upon detailed affidavit, only one machine out of a number was seized and it contained a single 12-minute peep-show reel, and arcade owner was offered hearing on propriety of the seizure the day after the seizure, the defendant-arcade owner was not entitled to hearing prior to issuance of the warrant. *J. J. Kaplan v. United States* (D.C. App. 1971, 277 A. 2d 477; cert. granted, judgment vacated, and remanded 93 S.Ct. 3030, 413 U.S. 913; aff'd on remand 311 A. 2d 506; cert. denied 94 S. Ct. 3229, 418 U.S. 942).

Chapter 21.—KIDNAPING

§ 22-2101. Definition and penalty—Conspiracy.

NOTES TO DECISIONS

Discovery

With the exception of records of impeachable convictions, the criminal records and records of arrests of government witnesses were not discoverable and the suppression of the testimony of government witnesses, as sanction for disobedience of pretrial discovery order, was in excess of trial court's authority. *United States v. W. C. Engram et ano.* (D.C. App. 1975, 337 A.2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Evidence—Admissibility

In prosecution of, inter alia, jail inmates for crimes arising out of jail break attempt in which they took District of Columbia Commissioner of Corrections hostage, there was no error in excluding from evidence statements which allegedly promised defendants immunity from prosecution in view of fact that neither District of Columbia Commissioner of Corrections nor federal district judge, who made such statements, had such power and fact that statements were made while Commissioner was

under duress. *United States v. F. Gorham, Jr.* (1975, 523 F.2d 1088, 173 U.S. App. D.C. 139; rehearing en banc denied 536 F.2d 410, — U.S. App. D.C. —).

— Sufficiency

Evidence, including testimony of complainant and others concerning incident, reasonably permitted a finding of guilt on charges of armed kidnapping, armed assault with intent to kill, and carrying a dangerous weapon. *R. N. Wooten v. United States* (D.C. App. 1975, 343 A. 2d 281).

Prosecution

Commissioner of Corrections' agreement not to prosecute jail inmates for crimes arising out of jail break attempt, made while he was their hostage, was not enforceable, in view of fact that Commissioner had no authority to make such agreement, agreement lacked consideration of knowing relinquishment of constitutional right, agreement involved performance of preexisting duty, agreement was induced by duress, and, agreements involving forbearance of prosecution are contrary to public policy. *United States v. F. Gorham, Jr.* (1975, 523 F.2d 1088, 173 U.S. App. 139; rehearing en banc denied print was made during commission of the offenses. *In re*

Chapter 22.—LARCENY—RECEIVING STOLEN GOODS

§ 22-2201. Grand larceny.

NOTES TO DECISIONS

Aid and abet

Under statute authorizing charging of aiders and abettors as principals, particular defendants who distributed allegedly obscene motion picture film could be convicted of knowingly presenting the film in the District of Columbia where such defendants supplied film to exhibitor therein in return for share of proceeds from the exhibition. *United States v. Sherpax, Inc.* (1975, 512 F.2d 1361, 168 U.S. App. D.C. 121).

Construction

While larceny remains an offense against possession, robbery is basically a crime against the person. *United States v. T. B. Dixon* (1972, 469 F. 2d 940, 152 U.S. App. D.C. 200).

Convictions—Mutually exclusive

Convictions of second defendant for burglary and grand larceny were mutually exclusive with conviction for receiving stolen property and bringing it into the District of Columbia, and vacating the burglary and larceny convictions which carried longer sentences cured any prejudice which resulted from the failure to properly instruct. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Discovery

With the exception of records of impeachable convictions, the criminal records and records of arrests of government witnesses were not discoverable and the suppression of the testimony of government witnesses, as sanction for disobedience of pretrial discovery order, was in excess of trial court's authority. *United States v. W. C. Engram et ano.* (D.C. App. 1975, 337 A.2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Evidence—Admissibility

Error, if any, in introduction into evidence of recordings between since deceased accomplice-informer and first defendant was not reversible error, in prosecution for conspiracy, burglary, grand larceny, interstate transportation of stolen property and bringing stolen property into the District of Columbia. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Admission into evidence of recorded conversations between since deceased accomplice-informer and first defendant which contained references to second defendant in joint trial did not violate second defendant's rights under the confrontation clause. *Id.*

Introduction in evidence in joint trial of recordings of conversation between first defendant and since deceased accomplice-informer was not improper on ground that

recordings, which were made outside the presence of counsel, denied defendants' right to counsel. *Id.*

Government informer's suicide note, written six days prior to suicide, and which contained language exculpating second defendant, was not within the dying declaration hearsay rule exception where the note was not made with belief that death was imminent and did not concern the cause or circumstances of what was believed to be impending death. *Id.*

Accomplice-informer's handwritten suicide note, which contained language exculpating second defendant, was not admissible as declaration against the informer's penal interest where there was no corroboration of the exculpatory statement. *Id.*

Where officer had victim point out suspects, officer took victim to office of prosecutor for protection and upon returning was unable to find defendant and another and then went to motel at which defendant was reportedly staying and arrested defendant and his companion as they were about to leave the city, arrest without a warrant, effectuated by unconsented to entry into motel room, for not only violations of the three-card monte statute but grand larceny was valid and paraphernalia seized as incident to arrest were admissible. *J. A. Bond v. United States* (D.C. App. 1973, 310 A. 2d 221).

Any conceivable prejudice by reception of testimony of arresting officers concerning nature of articles, which were characterized by officer as typical confidence game paraphernalia, as incident to proper arrest was cured by subsequent rejection of the exhibits as irrelevant in absence of a showing that the items were actually used in the particular incident on which prosecution for violation of three-card monte statute and grand jury was based. *Id.*

— Sufficiency

In proceeding in which accused was convicted of burglary and grand larceny and in which accused's fingerprint in burglarized house was assertedly the only evidence linking accused to the offenses, evidence satisfies government's burden of negating the most reasonable explanations under which such fingerprint evidence would be consistent with innocence and of showing that fingerprint was made during commission of the offenses. *In re M. M. J.* (D.C. App. 1975, 341A.2d 421).

Evidence as to value of stolen articles was sufficient to support conviction of grand larceny, especially in view of testimony of buyer that articles stolen and recovered had a retail value of \$248 and a wholesale value of \$124. *L. Saunders v. United States* (D.C. App. 1974, 317 A. 2d 867).

Evidence that defendant drove off in car owned by another, which was parked in parking lot with keys in ignition, without permission of owner, supported conviction of defendant of grand larceny and unauthorized use of vehicle. *P. T. Fredericks v. United States* (D.C. App. 1973, 306 A. 2d 268).

Evidence sustained larceny conviction of defendant who had been observed entering alleyway without certain goods in automobile and who was observed some time thereafter leaving alley with goods taken from business in automobile. *H. L. White v. United States* (D.C. App. 1973, 300 A. 2d 716).

Identification

Defendant's convictions of first-degree burglary, grand larceny, and malicious destruction of property were not supported by sufficient evidence, where, despite the complainant's testimony that he was able to identify defendant at showup because the image of defendant's face was implanted on his mind, the complainant was unable to identify defendant at trial, where his opportunity to observe the burglars was brief, where he saw them at night under artificial light, where his nearest observation of them was when they were running and 17 feet away, and where there was a significant discrepancy in almost all respects between the description given by complainant to the police and defendant's actual description, both physically and in respect to clothing. *W. B. Crawley v. United States* (D.C. App. 1974, 320 A. 2d 309).

Where identification of defendant during and immediately after lineup was uncertain, such uncertainty diminished overall strength of prosecuting witness' identification testimony and it was thus clear beyond reasonable

doubt that guilty verdict would have resulted even if jury had never heard such challenged testimony, and such testimony was therefore harmless beyond reasonable doubt. *J. Pender v. United States* (D.C. App. 1973, 310 A. 2d 252).

Where prosecuting witness had more than ample opportunity to observe and retain image of defendant while she was committing crime, and also identified defendant's photograph the day after crime from volumes given her by police, and at trial testified firmly and positively that her in-court identification was based on her observations of defendant during commission of crime, in-court identification was based on source independent of lineup and was admissible. *Id.*

Inferences

Unexplained or unsatisfactorily explained possession of property recently stolen permits inference that possessor is person who stole it. *H. L. White v. United States* (D.C. App. 1973, 300 A. 2d 716).

Where prosecution established corpus delicti of grand larceny, it was proper for jury to infer that defendant found in possession of stolen goods was guilty of the larceny. *Id.*

Intent

Defendant, who towed bus with valid tags without authorization to remove vehicle from housing authority parking lot, who used forged authority from housing authority to sell vehicle to used car dealer, and who, after rightful owner learned of such sale and contacted used car dealer, repurchased vehicle and took it to shredder at junkyard, had necessary felonious intent to sustain his conviction for grand larceny. *L. R. Fogle, Sr. v. United States* (D.C. App. 1975, 336 A.2d 833).

Grand larceny, as defined by this section, does not require intent to appropriate property permanently, but proof must merely manifest intent to appropriate property to use inconsistent with owner's rights. *P. T. Fredericks v. United States* (D.C. App. 1973, 306 A. 2d 268).

Jencks Act

Although trial court was required by Jencks Act to direct prosecution to produce notes taken by prosecutor during interview with witness on morning of trial, trial court's refusal to so order is harmless error and does not prejudice defendant where evidence from sources other than such witness overwhelmingly indicates defendant's guilt. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A.2d 301).

Joinder

Joinder of counts concerning second-degree burglary, grand larceny, and attempted burglary, was not improper. *L. P. Coleman v. United States* (D.C. App. 1972, 298 A. 2d 40; cert. denied 93 S. Ct. 3070, 413 U.S. 921).

Lesser included offense

If evidence in armed robbery prosecution did not warrant findings that the \$500 involved was taken from victim's person or immediate actual possession, then jury could only have properly found defendants guilty of the lesser included offense of grand larceny. *United States v. T. B. Dixon* (1972, 469 F. 2d 940, 152 U.S. App. D.C. 200).

Plea of guilty

No abuse of discretion was shown in denying defendant's request for withdrawal of guilty plea on ground that he was suffering withdrawal from methadone, in light of trial court's extensive questioning of defendant, prior to accepting plea, with awareness that defendant was receiving methadone treatment, so that trial court was capable of ascertaining that plea was voluntarily and intelligently made. *C. Durante v. United States* (D.C. App. 1973, 309 A. 2d 321).

Poisonous tree doctrine

Even assuming the illegality of prior arrest of defendant, he could not successfully invoke the poisonous tree doctrine where he pointed to no particular fruit of the alleged poisonous tree which was introduced into evidence against him and assuming that there was such actual fruit sought to be suppressed the connection between the fruits and the assertedly unlawful arrest and the evidence presented at trial for grand larceny in violation of three-card monte statute was so tenuous that any taint was dis-

sipated. *J. A. Bond v. United States* (D.C. App. 1973, 310 A. 2d 221).

Poisonous tree doctrine does not operate so broadly as to bar all subsequent prosecutions but rather operates on particular evidence, either tangible or testimonial, and if properly invoked causes exclusion only of such evidence. *Id.*

Prearrest delay

Dismissal of charges against accused is not warranted merely on basis of his assertion that prearrest delay, which was slightly more than three months and with regard to which there had been some lack of diligence on part of police but no intentional delay, deprived him of his ability to present a defense because he could not recall his activities or whereabouts on night of the offenses. *In re M. M. J.* (D.C. App. 1975, 341 A.2d 421).

Probable cause

Where officer observed accused looking or searching behind desk in room of office building and observed him depart as soon as officer's presence became known and accused answered "Nothing" when officer addressed defendant outside building and asked him what he had been doing in the office, officer had probable cause to arrest accused and fruits of larcenies seized from accused's person incident to the arrest were admissible. *W. Arrington v. United States* (D.C. App. 1973, 311 A. 2d 838).

Review—Record on appeal

Where there was nothing to indicate cause of delay between appointment of counsel on November 11, 1971 and status call on March 1, 1972, where there was no information concerning parole revocation proceedings involving defendant and Court of Appeals was left to speculate as to whether court-appointed counsel aided defendant in these proceedings and was therefore unable to avoid delay and where record did not indicate whether government's complaining witness, who was unavailable for March 17, 1972 trial date, was unavailable for entire period until August 31, 1972 trial, record was inadequate to determine whether defendant was denied his right to speedy trial, and record would be remanded for supplementation. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

Search and seizure

Warrantless search and seizure which occurred when police officer removed blanket from object which defendant had placed in public hallway while he went next door to make a telephone call and when officer copied serial number from object cannot be justified on basis of a suspicion or hunch on part of officer that a crime had been committed. *United States v. R. F. Boswell* (D.C. App. 1975, 347 A.2d 270).

Police officer's brief observation of defendant carrying a blanket-covered object on street, proximity of defendant to object once he left it unattended in a public hallway, i.e., 20 to 30 feet, and reason for leaving object, i.e., to make a telephone call in an adjacent laundromat, do not reasonably allow an inference of an intent on part of defendant to abandon object and, thus, do not operate to preclude defendant from questioning legality of search and seizure which occurred when officer removed blanket and copied serial number from object. *Id.*

Severance

Trial court did not abuse its discretion in prosecution for conspiracy, burglary, grand larceny, interstate transportation of stolen property, and bringing stolen property into the District of Columbia by denying severance to second defendant on ground of antagonistic defenses. *United States v. M. Lemonakis* (1973, 485 F. 2d 941, 158 U.S. App. D.C. 162; cert. denied 94 S. Ct. 1586, 1587, 415 U.S. 989).

Refusal to sever counts, in prosecution for second-degree burglary, grand larceny, and attempted burglary, was not an abuse of discretion where, inter alia, if there had been separate trials on each of the counts there would have been a substantial overlap of the evidence. *L. P. Coleman v. United States* (D.C. App. 1972, 298 A. 2d 40; cert. denied 93 S. Ct. 3070, 413 U.S. 921).

Speedy trial

Delay of approximately 11 months between indictment and trial, which initially was caused by defendant's con-

fusion of his counsel situation, and which thereafter was contributed to by combination of heavy calendar of the judge and the necessity of trying prior scheduled cases, the impossibility for a long period of securing attendance of complaining witness, judge's commitment to official duties, and to minor extent by the absence on vacation of defendant's counsel, was insufficient to constitute a denial of defendant's right to a speedy trial, in absence of any prejudice. *United States v. D. E. Douglas* (1974, 504 F. 2d 213, 164 U.S. App. D.C. 144).

Evaluating alleged deprivation of right to speedy trial requires a careful balancing in which conduct of both government and defendant are weighed; relevant factors include length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

Value—Evidence of

Evidence of value of items stolen by defendant and accomplices based on estimate of current market value and not original cost is sufficient to support defendant's conviction for grand larceny. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A. 2d 301).

For purposes of determining whether chattel which was subject to larceny had value of \$100 or more, market value may be established by testimony of its nonexpert owner. *L. Saunders v. United States* (D.C. App. 1974, 317 A. 2d 867).

In determining whether value of article which was subject of larceny was \$100 or more, testimony of management employee as to value of chattel is generally acceptable. *Id.*

For purposes of determining whether value of article which was subject to larceny was \$100 or more, the relevant market value is usually the retail value. *Id.*

Witnesses—Appointment of counsel

Where evidence indicates that two minor witnesses were innocent bystanders to burglary, and where witnesses were at all times willing to testify against defendant, defendant does not have standing to assert that trial court's refusal to appoint counsel for such minor witnesses before they testified was violation of witnesses' Fifth Amendment privilege against self-incrimination. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A. 2d 301).

— Immunity

Provisions of Organized Crime Control Act requiring prosecutor to obtain authorization from Attorney General before granting immunity to witnesses who refuse to testify does not bar prosecutor's grant of immunity to minor witnesses who at no time refused to testify and who were merely innocent bystanders of burglary with which defendant was charged. *In the Matter of R. D. J.* (D.C. App. 1975, 348 A. 2d 301).

§ 22-2202. Petit larceny—Order of restitution.

NOTES TO DECISIONS

Defendant's absence during proceedings

Defense counsel's tactical decision not to let complainant see defendant before trial at suppression hearing is binding upon defendant and waiver of his presence at hearing does not constitute reversible error. *A. L. Fludd v. United States* (D.C. App. 1975, 336 A.2d 539).

Evidence—Hearsay

Where evidence clearly established defendant's guilt of burglary and petit larceny of grocery store, admission in evidence of hearsay testimony of proprietor of store that he had heard that defendant had stolen his keys to store was not substantial or prejudicial error. *P. T. Fredericks v. United States* (D.C. App. 1973, 306 A. 2d 268).

— Sufficiency

Evidence was not sufficient to support conviction of petit larceny as an aider and abettor by pushing victim at the very time that pickpocket pushed the victim from the rear and removed victim's wallet from his pocket. *G. G. Quarles v. United States* (D.C. App. 1973, 308 A. 2d 773).

— Suppression

Where defendant, charged with petit larceny, made no pretrial motion to suppress allegedly stolen notebooks which were introduced at trial without objection, any objection to evidence was waived by defendant who claimed on appeal that the notebooks should have been suppressed

as having been seized illegally. *T. Grennett v. United States* (D.C. App. 1974, 318 A. 2d 589).

Identification—Lineup

Record discloses that lineup identification was not tainted by any suggestive photographic identification procedure or by police officer's subsequent remark to complainant that person whose photograph he had selected had been driver of car which complainant had stated he saw suspicious person drive away in. *A. L. Fludd v. United States* (D.C. App. 1975, 336 A.2d 539).

— Photographic

Even if procedure followed in photographic identification process was suggestive because defendant's picture was placed last in a book of approximately 50 others, it was not so unduly suggestive as to raise substantial likelihood of irreparable misidentification and does not warrant reversal of conviction. *A. L. Fludd v. United States* (D.C. App. 1975, 336 A.2d 539).

Jencks Act

In prosecution for petit larceny, failure of prosecution to provide defense counsel, who had requested all Jencks Act materials with original form on which special officer employed by store had initially recounted alleged shoplifting incident did not entitle defendant to hearing concerning existence and location of the original form and did not require that special officer's testimony be struck where, inter alia, original form was not within possession of prosecution and defense counsel had been furnished with a subsequent form which was a copy of the original with certain details added and grammatical changes made. *B. A. Johnson v. United States* (D.C. App. 1974, 322 A. 2d 590).

Peremptory challenges

Defendant who was charged with petit larceny, a misdemeanor for which maximum punishment was one year, was entitled to only the three peremptory charges available to defendant charged with such an offense notwithstanding fact that Government had filed notice that, if convicted, defendant would be subjected to additional penalties of the third offender statute. *C. E. Tatum v. United States* (D.C. App. 1974, 330 A. 2d 522).

Probable cause

Where police officers, accompanied by neighbor and owner of car from which battery had been stolen a short time before, came upon two men, immediately identified as the thieves by the passengers in the police car, working with battery cables under the raised hood of a car, the police officers had probable cause both to arrest defendant and his companion and to search the car for the stolen battery. *D. M. Robinson v. United States* (D.C. App. 1974, 322 A. 2d 271).

Where officer observed accused looking or searching behind desk in room of office building and observed him depart as soon as officer's presence become known and accused answered "Nothing" when officer addressed defendant outside building and asked him what he had been doing in the office, officer had probable cause to arrest accused and fruits of larcenies seized from accused's person incident to the arrest were admissible. *W. Arrington v. United States* (D.C. App. 1973, 311 A. 2d 838).

Prosecution

Had defendant, charged with misdemeanor of petit larceny, been entitled to have prosecution commenced by way of indictment, because of possible imposition of more than one year sentence under recidivist statute, failure to so prosecute would have constituted plain error requiring reversal, in absence of waiver. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

Review—Record on appeal

Where there was nothing to indicate cause of delay between appointment of counsel on November 11, 1971 and status call on March 1, 1972, where there was no information concerning parole revocation proceedings involving defendant and Court of Appeals was left to speculate as to whether court-appointed counsel aided defendant in these proceedings and was therefore unable to avoid delay and where record did not indicate whether government's complaining witness, who was unavailable for March 17.

1972 trial date, was unavailable for entire period until August 31, 1972 trial, record was inadequate to determine whether defendant was denied his right to speedy trial, and record would be remanded for supplementation. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

Sentence

Eighteen months' sentence for petit larceny, a misdemeanor, did not constitute punishment for the offense itself and thus did not cause the noninfamous offense, which may be prosecuted by information, to be transformed later to an infamous offense which must be prosecuted by indictment, unless waived. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

Where, at sentencing proceeding, trial court neglected to clearly inform defendant of prior convictions allegedly warranting enhancement of punishment on conviction of petit larceny or to inquire whether defendant affirmed or denied each conviction and court merely inquired of defendant regarding a prior petit larceny conviction not listed in pretrial information, which conviction she affirmed, 18 months' sentence was required to be set aside and case remanded for resentencing, notwithstanding that defendant had failed to file written answer to information. *Id.*

Trial court did not erroneously fail to sentence youth under Federal Youth Corrections Act for misdemeanors he had admitted committing, where trial court expressly found that youth, who had committed the misdemeanors in question while still awaiting sentence by United States district court for attempted robbery and who had left without permission a development center and a halfway house while awaiting determination of armed robbery charges, was unlikely to be rehabilitated by Youth Corrections Act treatment. *R. J. Hubb v. United States* (D.C. App. 1972, 298 A. 2d 512).

Speedy trial

Delay of approximately 11 months between indictment and trial, which initially was caused by defendant's confusion of his counsel situation, and which thereafter was contributed to by combination of heavy calendar of the judge and the necessity of trying prior scheduled cases, the impossibility for a long period of securing attendance of complaining witness, judge's commitment to official duties, and to minor extent by the absence on vacation of defendant's counsel, was insufficient to constitute a denial of defendant's right to a speedy trial, in absence of any prejudice. *United States v. D. E. Douglas* (1974, 504 F. 2d 213, 164 U.S. App. D.C. 144).

Evaluating alleged deprivation of right to speedy trial requires a careful balancing in which conduct of both government and defendant are weighed; relevant factors include length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

§ 22-2203. Larceny after trust.

NOTES TO DECISIONS

Instructions

In prosecution under this section, giving instruction which correctly stated that evidence of similar criminal acts was admissible to prove intention but which was overly broad in further stating that evidence was admissible on general questions of motive, identity, absence of mistake or inadvertence, or to show common scheme or purpose was not prejudicial error. *J. R. Gay v. United States* (D.C. App. 1969, 259 A. 2d 593; see also 93 S. Ct. 2152, 411 U.S. 974).

§ 22-2204. Unauthorized use of vehicles.

NOTES TO DECISIONS

Arrest

Where, after being stopped for having run stop sign, defendant was unable to furnish officers with either driver's permit or vehicle registration and police were unable to verify ownership by other means because of computer malfunction, police had probable cause to believe that vehicle was being used without authorization and to ar-

rest defendant on that basis. *R. A. Botts v. United States* (D.C. App. 1973, 310 A. 2d 237).

Defense

Testimony by accused that he believed car in question had been abandoned is relevant to specific intent offense but such testimony is not, per se, a defense to charge of unauthorized use of motor vehicle. *C. Williams v. United States* (D.C. App. 1975, 337 A.2d 772).

Double jeopardy

Juvenile, whose counsel had secured oral ruling of acquittal on charge of unauthorized use of a motor vehicle, had waived any potential double jeopardy claim when his trial counsel acquiesced in continuation of hearing and reopening of count when registered owner of vehicle appeared in courtroom. *In the Matter of J. A. H.* (D.C. App. 1974, 315 A. 2d 825).

Even if double jeopardy claim had not been waived by defense counsel's failure to object to reopening following oral granting of motion for judgment of acquittal, such reopening would not have placed juvenile in double jeopardy since oral ruling was not equivalent to a final, written judgment. *Id.*

Evidence

In delinquency proceeding where juvenile was charged with unauthorized use of a vehicle, testimony of police officer that defendant resided in Laurel, Maryland, and that one of other youths in vehicle had told officer that white shoes found in vehicle belonged to juvenile's sister and that juvenile had been wearing them was hearsay and should not have been admitted, but error in admitting testimony is not prejudicial, where juvenile's place of residence was a matter of record which could be noticed by court, and evidence in respect to shoes was probative of nothing more than that juvenile was a passenger in vehicle, a fact that was established by other admissible evidence and was not contested at trial. *In the Matter of T. T. B.* (D.C. App. 1975, 333 A.2d 671).

— Sufficiency

Evidence in delinquency proceeding, such as circumstance that juvenile, who was a passenger in a stolen automobile, fled from scene at time vehicle was halted by police and, upon apprehension after a chase of several blocks, made two attempts to free himself, establishes guilty knowledge necessary to establish offense of unauthorized use of a vehicle. *In the Matter of T. T. B.* (D.C. App. 1975, 333 A.2d 671).

Testimony by two police officers that they saw defendant take gun from his belt and replace it, that they saw defendant enter driver's side of a van, subsequently found to be stolen, that they subsequently saw three men standing near the van with defendant closest to it, and testimony by one of the two officers that he saw defendant drop the gun sustained defendant's convictions for unauthorized use of a motor vehicle and carrying a pistol without a license. *D. R. Reed v. United States* (D.C. App. 1973, 312, A. 2d 775).

Evidence that defendant drove off in car owned by another, which was parked in parking lot with keys in ignition, without permission of owner, supported conviction of defendant of grand larceny and unauthorized use of vehicle. *P. T. Fredericks v. United States* (D.C. App. 1973, 306 A. 2d 268).

Inferences

In delinquency proceeding wherein juvenile was charged with unauthorized use of a vehicle, a justifiable inference of consciousness of guilt can be drawn from evidence of juvenile's initial flight from stolen vehicle and his later attempts to pull away from arresting officer and to leave police cruiser. *In the Matter of T. T. B.* (D.C. App. 1975, 333 A.2d 671).

Jury could draw an inference of guilt, in prosecution for unauthorized use of motor vehicle and for receiving stolen property, from defendant's possession of stolen vehicle approximately six weeks after it was taken, where court made it clear in its instructions that jury was not required to draw any inferences, that possession of recently stolen property did not shift the Government's burden of proof, and that the inference was forbidden if defendant's possession of the property was satisfactorily explained by independent evidence or by his own testi-

mony. *A. Fleming, Jr. v. United States* (D.C. App. 1973, 310 A. 2d 214).

Instructions

Evidence in prosecution for unauthorized use of motor vehicle did not warrant instruction on theory that accused lacked requisite criminal intent if he believed that automobile he was using had been abandoned. *C. Williams v. United States* (D.C. App. 1975, 337 A.2d 772).

Instruction in prosecution for unauthorized use of a motor vehicle and for receiving stolen property, which stated that an act is done knowingly if it is done voluntarily and purposefully and not because of mistake, inadvertence, or accident, was consistent with defendant's defense that he was buying the vehicle, and absence of further elaboration did not amount to plain error since there would seem to be no possible way a jury could find the specific intent necessary to find defendant guilty of crime of receiving stolen property without finding the use and operation of the stolen vehicle anything but "unauthorized" as that term appeared in statute. *A. Fleming, Jr. v. United States* (D.C. App. 1973, 310 A. 2d 214).

Jury

Where defendant charged with receiving stolen property and unauthorized use of vehicle was denied opportunity to inquire on voir dire as to whether jurors would give greater credence to testimony of police officer merely because he was police officer than to any other witness, conviction would be set aside. *B. Harvin, Jr. v. United States* (D.C. App. 1972, 297 A. 2d 774).

Jury question

Issue of guilt of defendant, who was charged with unauthorized use of a motor vehicle and of receiving stolen property, was properly submitted to jury where evidence presented, including fact that defendant was arrested while driving stolen vehicle approximately six weeks after it was taken, was such that reasonable minds might fairly have a reasonable doubt or might not have such a doubt. *A. Fleming, Jr. v. United States* (D.C. App. 1973, 310 A. 2d 214).

Review

Since juvenile's counsel, who had previously secured oral ruling of acquittal on charge of unauthorized use of a motor vehicle, did not object to reopening of such count when registered owner of vehicle appeared in courtroom, scope of review was limited to determination of whether reopening constituted plain error. *In the Matter of J. A. H.* (D.C. App. 1974, 315 A. 2d 825).

—Record on appeal

Where there was nothing to indicate cause of delay between appointment of counsel on November 11, 1971 and status call on March 1, 1972, where there was no information concerning parole revocation proceedings involving defendant and Court of Appeals was left to speculate as to whether court-appointed counsel aided defendant in these proceedings and was therefore unable to avoid delay and where record did not indicate whether government's complaining witness, who was unavailable for March 17, 1972 trial date, was unavailable for entire period until August 31, 1972 trial, record was inadequate to determine whether defendant was denied his right to speedy trial, and record would be remanded for supplementation. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

Search and seizure

Where arrestee requested his leather jacket from closet and stepped forward to a point within three or four feet of closet before he was stopped, he thus brought within his immediate control the area where sawed-off shotgun was concealed in partially open suitcase, even though arrestee's arms were handcuffed in front of him, and agent, as incident to arrest, was justified in conducting a warrantless search of the suitcase and in seizing sawed-off shotgun found therein. *United States v. D. C. Mason* (1975, 523 F. 2d 1122, 173 U.S. App. 173).

Speedy trial

Delay of approximately 11 months between indictment and trial, which initially was caused by defendant's confusion of his counsel situation, and which thereafter

was contributed to by combination of heavy calendar of the judge and the necessity of trying prior scheduled cases, the impossibility for a long period of securing attendance of complaining witness, judge's commitment to official duties, and to minor extent by the absence on vacation of defendant's counsel, was insufficient to constitute a denial of defendant's right to a speedy trial, in absence of any prejudice. *United States v. D. E. Douglas* (1974, 504 F. 2d 213, 164 U.S. App. D.C. 144)

Evaluating alleged deprivation of right to speedy trial requires a careful balancing in which conduct of both government and defendant are weighed; relevant factors include length of delay, reason for delay, defendant's assertion of his right, and prejudice to defendant. *United States v. D. E. Douglas* (1973, 488 F. 2d 1331, 160 U.S. App. D.C. 7).

§ 22-2205. Receiving stolen goods.

CROSS REFERENCE

Bringing stolen property into District, see § 22-108.

NOTES TO DECISIONS

Attempt

Defendant, who received a television set, which in fact had not been stolen, after having been advised that the set was a stolen set, did not commit crime of attempted receiving stolen property, since an unsuccessful attempt to do that which is not a crime cannot be held to be an attempt to commit crime specified. *United States v. F. Hair* (1973, 356 F. Supp. 339).

Corporate property

When ownership of stolen property is claimed to be in a corporation, such claim must be supported by evidence. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A. 2d 587).

The existence of a corporation, as a victim of theft, may be proven by production of a charter or certificate of incorporation, by a license to do business, or by parol evidence of incorporation or of user or reputation. *Id.*

Elements of offense

Where prosecution failed to establish the corporate existence of corporation from which pistol was allegedly stolen, it failed to establish an essential element of proof against defendant who allegedly received stolen property by taking the pistol. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A. 2d 587).

Where there was an unexplained possession of recently stolen property, it was unnecessary for government to prove amount defendant paid for property, since amount paid was not an element of crime, and hence it was not improper to refuse defendant's proposed instruction that government was required to prove specific amount of money paid in order to show knowledge and intent. *M. H. Barnes, Sr. v. United States* (D.C. App. 1973, 313 A. 2d 106).

Offense of receiving stolen property is composed essentially of four elements: (1) the property must be received, (2) at the time of its receipt the property must be stolen, (3) the receiver must have guilty knowledge that it is stolen property, (4) his intent in receiving it must be fraudulent. *L. E. Brown v. United States* (D.C. App. 1973, 304 A. 2d 21).

Evidence—Admissibility

Where defendant, being held on suspicion of driving automobile without authorization of owner, had not been informed that anything he said could be used against him or that lawyer would be provided for him if he could not afford one, false statement by defendant to officers during questioning that stolen driver's permits found in automobile belonged to his girl friend was not admissible into evidence, though defendant was allegedly "no stranger to the criminal process." *R. A. Botts v. United States* (D.C. App. 1973, 310 A. 2d 237).

—Sufficiency

In prosecution for receiving stolen property, proof of both monetary cost of stolen automobile license tags allegedly received by defendant and fact that tags were current is sufficient to establish that tags had value and to support defendant's conviction. *F. P. Jones v. United States* (D.C. App. 1975, 345 A. 2d 144).

Evidence that juvenile took possession of stolen credit card when automobile in which he was riding was stopped by the police, that he furtively attempted to conceal it under the armrest of the automobile, that he denied having credit card in his possession when asked to hand it over to police officer, that, after card was retrieved by the officer, juvenile disclaimed knowledge of who owned it, and that the credit card was in fact stolen sustains finding that juvenile feloniously possessed stolen goods with specific intent to defraud. *In the Matter of V. L. M.* (D.C. App. 1975, 340 A.2d 818).

Since stolen property which juvenile was accused of possessing, a currently usable credit card, is of obvious monetary value to its owner and to anyone who might attempt to use it to obtain gasoline on credit and since court found juvenile to have committed only a misdemeanor by finding that the card had no value in excess of \$100, finding of delinquency is not improper on theory that government failed to show the value of the stolen credit card. *Id.*

Where Government showed that defendant had in his possession approximately 2,000 blank government identification cards but Government failed to introduce any evidence that the goods had been stolen, it did not meet its burden of proving beyond a reasonable doubt an element of offense of receiving stolen property. *L. E. Brown v. United States* (D.C. App. 1973, 304 A.2d 21).

Fair trial

Where Government's case in prosecution for forgery, uttering and receiving stolen property rested on documents and unchallenged identification of accused, seven-month nondeliberate delay between date of such offenses and accused's arrest did not deprive accused of fair trial in violation of due process, notwithstanding contentions that if accused had been charged more promptly, he might have remembered what he was doing when he was accused of being in certain shop and could have located "former marine buddy" who assertedly accompanied accused to a second shop. *G. Hurt v. United States* (D.C. App. 1974, 314 A.2d 489).

Indictment

District Court properly refused to dismiss indictment for distribution of cocaine and for receiving stolen property on ground that tape recording of preliminary hearing testimony had been accidentally erased by re-recording company from which magistrate's office had requested transcript, where there was no reason to believe that defense was in any way prejudiced by unavailability of the transcript. *United States v. R. R. Carpenter* (1975, 510 F.2d 738, 166 U.S. 163 U.S. App. 358).

Fact that suffix "Sr." was not affixed to defendant's name in indictment charging receiving of stolen goods was not prejudicial and fatal to indictment. *M. H. Barnes, Sr. v. United States* (D.C. App. 1973, 313 A.2d 106).

Inferences

Jury could draw an inference of guilt, in prosecution for unauthorized use of motor vehicle and for receiving stolen property, from defendant's possession of stolen vehicle approximately six weeks after it was taken, where court made it clear in its instructions that jury was not required to draw any inferences, that possession of recently stolen property did not shift the Government's burden of proof, and that the inference was forbidden if defendant's possession of the property was satisfactorily explained by independent evidence or by his own testimony. *A. Fleming, Jr. v. United States* (D.C. App. 1973, 310 A.2d 214).

Instructions

Instruction which served purpose of warning jury against determining weight of evidence solely on basis of number of witnesses testifying on either side was not required where defense elected not to introduce any witnesses. *M. H. Barnes, Sr. v. United States* (D.C. App. 1973, 313 A.2d 106).

Instruction in prosecution for unauthorized use of a motor vehicle and for receiving stolen property, which stated that an act is done knowingly if it is done voluntarily and purposefully and not because of mistake, inadvertence, or accident, was consistent with defendant's defense that he was buying the vehicle, and absence of further elaboration did not amount to plain error since

there would seem to be no possible way a jury could find the specific intent necessary to find defendant guilty of crime of receiving stolen property without finding the use and operation of the stolen vehicle anything but "unauthorized" as that term appeared in statute. *A. Fleming, Jr. v. United States* (D.C. App. 1973, 310 A.2d 214).

Joinder

Joinder of receiving stolen property count with forgery and uttering counts was not prejudicial misjoinder where all counts related to offenses at certain shop, where evidence on all counts was sufficient for jury and where, though evidence was elicited as to accused's use of stolen credit card at another shop, such evidence was probative as corroborative of handwriting evidence and limiting instruction was given. *G. Hurt v. United States* (D.C. App. 1974, 314 A.2d 489).

Jury

Where defendant charged with receiving stolen property and unauthorized use of vehicle was denied opportunity to inquire on voir dire as to whether jurors would give greater credence to testimony of police officer merely because he was police officer than to any other witness, conviction would be set aside. *B. Harvin, Jr. v. United States* (D.C. App. 1972, 297 A.2d 774).

Jury question

Issue of guilt of defendant, who was charged with unauthorized use of a motor vehicle and of receiving stolen property, was properly submitted to jury where evidence presented, including fact that defendant was arrested while driving stolen vehicle approximately six weeks after it was taken, was such that reasonable minds might fairly have a reasonable doubt or might not have such a doubt. *A. Fleming, Jr. v. United States* (D.C. App. 1973, 310 A.2d 214).

New trial

Where there was no indication that prosecution witness' testimony at trial was perjurious, notwithstanding existence of prior inconsistent statement which was undetected or overlooked by defendant at trial, or that acquittal would necessarily follow impeachment of witness through use of said prior inconsistent statements, defendant is not entitled to new trial in interests of justice. *H. S. Huggins v. United States* (D.C. App. 1975, 333 A.2d 385).

Proof

Through indictment charged defendant with receiving as stolen goods one case of vodka one-half pints and one case of vodka pints, whereas at trial it was shown that both cases of vodka were half-pints, variance was not fatal, absent a showing of prejudice. *M. H. Barnes, Sr. v. United States* (D.C. App. 1973, 313 A.2d 106).

Search and seizure

Warrantless search and seizure which occurred when police officer removed blanket from object which defendant had placed in public hallway while he went next door to make a telephone call and when officer copied serial number from object cannot be justified on basis of a suspicion or hunch on part of officer that a crime had been committed. *United States v. R. F. Boswell* (D.C. App. 1975, 347 A.2d 270).

Police officer's brief observation of defendant carrying a blanket-covered object on street, proximity of defendant to object once he left it unattended in a public hallway, i.e., 20 to 30 feet, and reason for leaving object, i.e., to make a telephone call in an adjacent laundromat, do not reasonably allow an inference of an intent on part of defendant to abandon object and, thus, do not operate to preclude defendant from questioning legality of search and seizure which occurred when officer removed blanket and copied serial number from object. *Id.*

Where police officers watched defendants stalk two female pedestrians at 2:00 in the morning, return to their car, depart abruptly, and lead police officers in high-speed chase, and where one occupant had been seen leaning down in the front seat, police officers were justified in stopping the car and searching under the front seat and behind the glove compartment where stolen, unlicensed pistol was found, after the occupants had been removed from the car. *United States v. J. W. Thomas and W. L. Sutton* (D.C. App. 1974, 314 A.2d 464).

Where officers had probable cause to arrest defendant for unauthorized use of motor vehicle, subsequent search of automobile at station house after defendant stated that vehicle registration must be located there was valid, and stolen driver's permits found during search were admissible in evidence in subsequent trial of defendant on charges of receiving stolen property. *R. A. Botts v. United States* (D.C. App. 1973, 310 A. 2d 237).

Sentence

There is no statutory authority for imposing a fine on conviction of felonious offense of receiving stolen property having a value of \$100 or upward. *M. H. Barnes, Sr. v. United States* (D.C. App. 1973, 313 A. 2d 106).

Stolen goods

Fact that two cases of stolen vodka were delivered to defendant by a private undercover agent did not mean that vodka lost its character as stolen property and was instead "recovered" property under common-law rule governing receipt of stolen-but-recovered property, where, at time of delivery, agent was acting under direction of a third party as part of that individual's general criminal design, so that delivery was performed as a form of observation and surveillance rather than as a recovery of property on behalf of rightful owner. *M. H. Barnes, Sr. v. United States* (D.C. App. 1973, 313 A. 2d 106).

Chapter 23.—LIBEL—BLACKMAIL—EXTORTION

§ 22-2307. Threatening to kidnap or injure a person or damage his property—Penalty.

NOTES TO DECISIONS

Estoppel

After accused was acquitted of a threat to do bodily harm and bribery and jury "hung" on charge of obstruction of justice, Government is not collaterally estopped from retrying accused on charge of obstruction of justice on theory that verdict of not guilty on "threats" charge determined the issue with respect to identical threats alleged in obstruction of justice charge. *United States v. L. M. Smith* (D.C. App. 1975, 337 A.2d 499).

Chapter 24.—MURDER—MANSLAUGHTER

§ 22-2401. Murder in the first degree—Purposeful killing—Killing while perpetrating certain crimes.

NOTES TO DECISIONS

Abuse of discretion

Trial court's interventions during trial did not deny defendant fair trial where they were neither hostile nor coupled with critical remarks. *T. Turt v. United States* (D.C. App. 1975, 337 A.2d 215).

Appeal and error

Even if trial court's initial ruling restricting closing arguments to deny defense counsel opportunity to argue that defendant was mere bystander at scene of murder was error, it lost aura of harmful error when court did in fact allow substantial closing argument to be made as to the identity of the individual who in fact committed the murder. *T. Peoples v. United States* (D.C. App. 1974, 329 A. 2d 446).

Assistance of counsel

Defendant was not denied his Sixth Amendment right to assistance of counsel because the court's refusal to admit defendant's statements at start of his testimony regarding what he had stated to police officer shortly after the murder made it impossible for the defendant to present his case "in the best light legally possible." *United States v. L. R. Smith* (1974, 490 F. 2d 789, 160 U.S. App. D.C. 221).

Where defendant was described by companions and another on night of murder as tall man with plaid shirt and where eyewitness to murder described gunman as taller of two assailants and was wearing a plaid shirt, court's restricting defense counsel from arguing that defendant was not the gunman did not amount to denial of the effective assistance of counsel or constitute prejudicial error. *T. Peoples v. United States* (D.C. App. 1974, 329 A. 2d 446).

Change of venue

With respect to motion for change of venue which was first granted and was then withdrawn by defendant, no error was shown by contention that transfer was made contingent on relinquishment of right to effective counsel, where counsel who was preparing insanity defense was from the legal aid agency and by statute could not follow the case outside the district, and where issue of replacement counsel in transferee district was never raised since defendant insisted on retaining original counsel and accordingly chose to have case remain in District of Columbia, where his chief counsel assured trial court that defendant could get a fair trial. *United States v. B. A. Bryant* (1972, 471 F. 2d 1040, 153 U.S. App. D.C. 72; cert. denied 93 S. Ct. 923, 409 U.S. 1112).

Confession

Admission of defendant's statement in his confession that he had killed three other people constituted prejudicial error requiring reversal of conviction, where in earlier parts of his confession defendant had admitted in detail that he killed the victim pursuant to a contract "because of numbers," where exclusion of reference to three prior murders could easily have been made without impairing the confession, and where court in its charge to jury made no attempt to limit effect of the evidence concerning the commission of prior offenses. *United States v. C. E. Wiggins* (1975, 509 F.2d 454, 166 U.S. App. D.C. 121).

There is no requirement that police stop a man from talking when he voluntarily and without solicitation says he wants to confess to a crime. *Id.*

Notwithstanding defendant's contention that the trial court erred in failing to suppress his alleged confession where it was uncontroverted that he had made known his wish and intention to consult with an attorney, but where the Government had, nevertheless, continued to interrogate him in the absence of an attorney and eventually elicited the confession, the record showed, in support of conclusion that defendant waived his right to the presence of an attorney, that defendant simply indicated he was "undecided" about an attorney and then decided to go ahead and give a statement. *United States v. W. H. Howard* (1972, 470 F. 2d 406, 152 U.S. App. D.C. 258).

Constitutionality

That the District of Columbia felony murder statute was broader than coverage of federal felony murder statute did not deny equal protection to accused who was prosecuted under such D.C. statute for murder committed during commission of offense of rescuing a federal prisoner. *United States v. L. Greene* (1973, 489 F. 2d 1145, 160 U.S. App. D.C. 21; cert. denied 95 S. Ct. 239, 419 U.S. 977).

Construction

Under this section requiring that a homicide committed during a felony be done "purposely" unless the felony is "arson, rape, mayhem, robbery, or kidnapping," by eliminating the element of "purpose". Congress intended to apply the common-law felony-murder rule to them, that is, that a homicide committed in course of their perpetration is murder because the "malice" required for murder can be implied from commission of the felony; the doctrine of implied malice obviates the need for the Government to prove that death was "foreseeable" when homicide occurs during any of the five specified felonies. *United States v. J. R. Branick* (1974, 495 F. 2d 1066, 162 U.S. App. D.C. 10).

Felony-murder statutes do not embody a legislative purpose to deter the commission of felonies to the point of embracing the coincidence rationale. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

National felonies, including offense of rescuing a federal prisoner, constituted "any offenses" within this section providing in effect that "Whoever, being of sound memory and discretion, kills another purposely, * * * in perpetrating or attempting to perpetrate any offense punishable by imprisonment in the penitentiary" commits felony murder. *United States v. L. Greene* (1973, 489 F. 2d 1145, 160 U.S. App. D.C. 21; cert. denied 95 S. Ct. 239, 419 U.S. 977).

Cross-examination

Refusal, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to permit cross-examination of accomplice, who

testified for government and whose counsel had been informed that government would be willing, with regard to unrelated narcotics and robbery charges against accomplice, to accept plea of guilty to one misdemeanor, as to whether government had made any disposition of such unrelated charges was reversible error when considered in conjunction with other errors. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Defense

Where only evidence linking defendant with homicides was testimony of confessed accessory who was granted immunity, defendant's theory that accessory committed the killings and lied about defendant to cover up his own guilt was supported by testimony of eye-witnesses who described a man fitting accessory's description as being near scene of crimes, and defense counsel's closing argument seeking to present such theory did not supplement or misstate the record but merely suggested that jury draw certain inferences, restriction of closing argument so as to prevent defense counsel from suggesting that accessory committed the murders impaired defendant's constitutional right to a closing argument in his behalf and was not harmless beyond reasonable doubt. *United States v. W. L. DeLoach, Sr.* (1974, 504 F. 2d 185, 164 U.S. App. D.C. 116; cert. denied 96 S.Ct. 2232, 426 U.S. —).

Due process

Reindictment of defendants for first-degree murder, after their first trial on charge of second-degree murder had ended with a declaration of mistrial granted on motion of defense counsel, denied defendants due process, of law, absent any showing of justification for the increase in the degree of the crime charged. *United States v. Jamison, Jr.* (1974, 505 F. 2d 407, 164 U.S. App. D.C. 300).

Since it could not be said that defendants, whose first trial on charge of second-degree murder ended with a declaration of mistrial and who were then reindicted and found guilty on charge of first-degree murder, were not prejudiced by having to defend, on the retrial, against the higher, illegal charge, the Court of Appeals would not, under those circumstances, remand the case with directions to simply enter convictions for second-degree murder. *Id.*

Elements of offense

Even if at time of shooting of grocery store security guard defendants were "casing" the store preparatory to a later attempt to rob, the intent to rob requisite to felony-murder conviction would not yet have arisen since it is necessary that the felony have progressed beyond mere preparation to an indictable attempt before the homicide occurs. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

To support conviction of aiding and abetting a felony-murder, the homicide must have been committed in the course of the felony and in furtherance of the common purpose to commit the felony, rather than merely coincidental with it. *Id.*

To prove first-degree murder, Government must introduce facts which provide proof beyond a reasonable doubt that a crime was committed not merely intentionally, in sustained frenzy or heat of passion, but with premeditation and deliberation. *United States v. J. L. Peterson* (1974, 509 F.2d 408, 166 U.S. App. D.C. 75).

Elements of felony murder under this section are that a felony was attempted or being perpetrated and that during the course of action the deceased was purposely killed. *United States v. L. Greene* (1973, 489 F. 2d 1145, 160 U.S. App. D.C. 21; cert. denied 95 S. Ct. 239, 419 U.S. 977).

Murder in the first degree is intentional homicide done deliberately and with premeditation, and homicide that is intentional but "impulsive," not done after "reflection and meditation", is murder in the second degree. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

Offense of deliberated and premeditated murder requires a specific intent that cannot be satisfied merely by showing defendant failed to conform to objective standard. *Id.*

Evidence—Abnormal mental condition

Even when there is no defense of insanity, expert testimony of abnormal mental condition will be admissible when it bears on the existence of specific mental element necessary for a crime, provided trial judge determines that the testimony is grounded in sufficient scientific support, and would aid jury in reaching decision on ultimate issues; overruling *Fisher v. United States*, 80 U.S. App. D.C. 96, 149 F. 2d 28. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

A defendant who presents evidence that his abnormal condition of the mind has substantially impaired behavioral controls is exculpated if his behavioral controls were not only substantially impaired but were impaired to such extent that he lacked substantial capacity to conform his conduct to the law. *Id.*

—Admissibility

Statements made by defendants in casual conversation, out of the presence of police and immediately after homicide and robbery, offered to prove that defendants had recently engaged in some violent episode together, were admissible as admissions of a party opponent, each defendant adopting the other's statement. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

On trial of a defendant for one offense, evidence that he committed another is inadmissible to prove his disposition to commit crime; the jury may not be permitted to infer that the defendant is guilty of the crime charged because he committed another similar offense. *United States v. C. E. Wiggins* (1975, 509 F.2d 454, 166 U.S. App. D.C. 121).

Admission of color photograph of decedent's body is not error in homicide case, where photograph was not so gruesome as to create risk of inflaming jury and was relevant to manner in which murder occurred and therefore to issue of premeditation and deliberation and was also useful to show nature of injuries suffered by decedent, linking blood found on defendant's clothing to the crime. *J. C. Womack v. United States*. (D.C. App. 1975, 339 A.2d 37).

Testimony by accomplices as to statements which were made to them by defendant during commission of crimes charged in prosecutions for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary and which incriminated codefendants, were admissible under either exception to hearsay rule for contemporaneous declarations which partake of the event or exception for spontaneous declarations or excited utterances. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

In murder prosecution, wherein defendant proposed to take the stand first and then introduce a written statement which he had made to police officer that defendant had killed victim in self-defense, for purpose of corroborating what defendant was going to state on the stand, such statement was properly excluded at that time as hearsay and as corroborating an exculpatory statement that was self-serving. *United States v. L. R. Smith* (1974, 490 F. 2d 789, 160 U.S. App. D.C. 221).

In murder prosecution, trial court acted within its discretion in admitting two black and white photographs of inside of house showing where victim was standing when he was shot and where he fell, where photographs were probative of place where victim was shot, and were material on issues in the case. *Id.*

In murder prosecution, admission of testimony by decedent's wife that her marriage was trouble-free did not constitute plain error and hence was not reviewable, where no objection to its admission was made. *Id.*

Testimony concerning drugs and drug distribution was admissible in murder prosecution where it had a direct bearing on codefendant's previously being shot by the victim; such testimony was also admissible on question of defendant's motive to avenge codefendant's shooting. *J. L. Jackson v. United States* (D.C. App. 1974, 329 A. 2d 782; cert. denied 96 S. Ct. 95, 423 U.S. 851).

Where, in prosecution of defendant for first-degree murder and carrying dangerous weapon, there was no claim of self-defense, suicide, accidental death or any other plausible issue that would justify inquiry into victim's state of mind, court committed prejudicial error in admitting testimony by victim's wife that victim was frightened that he might be killed by defendant. *United*

States v. R. W. Brown (1973, 490 F. 2d 758, 162 U.S. App. D.C. 10).

— Character

In murder prosecution, there was no error in striking testimony of one witness presented to establish deceased's reputation for violence, where such testimony was cumulative as well as vague and uncertain. *T. Hurt v. United States* (D.C. App. 1975, 337 A.2d 215).

— Disclosure to defense

Prosecutor's failure to provide defense in advance with lineup sheets showing two misidentifications or with four bullets found on defendant after his arrest was not reversible error where the lineup sheets showed that counsel for defendant was present at the lineups and the bullets were easily available to defense counsel in the Government's property office where counsel examined the money taken from his client, *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

Evidence in proceeding on motion for new trial, or alternatively, dismissal of indictment, supported trial court's findings that the statements and testimony of witnesses whose statements were allegedly wrongfully withheld from the defense did not include evidence that was relevant or material or that would be helpful to the defense or tend to exculpate accused and that the disclosure to accused prior to trial of the statements would not have led to evidence that was relevant or material or that would tend to be exculpatory of murder and assault with intent to rob charges. *United States v. D. J. Bowles* (1973, 488 F. 2d 1307, 159 U.S. App. D.C. 407; cert. denied 94 S. Ct. 1591, 415 U.S. 991).

Where statements given by witnesses to police during murder investigation did not include evidence that was relevant or material or that would be helpful in the defense or tend to exculpate accused and the disclosure to accused prior to trial would not have led to evidence that was relevant or material or that would tend to be exculpatory, accused was not denied due process of law because the statements were withheld from the defense. *Id.*

— Expert testimony

Testimony of defense's expert witness was relevant and admissible to apprise jury of the factual foundation for the witness' conclusion and as evidence as to the credibility of that diagnosis. *United States v. J. L. Peterson* (1974, 509 F.2d 408, 166 U.S. App. D.C. 75).

— Mental disease or defect

In determining whether to admit evidence on issue whether a defendant's mental condition negated his ability to form the requisite mental state for first-degree murder, judge must determine whether the evidence is sufficiently grounded in scientific fact and whether it directly addresses the mental element at issue so that its introduction will not unduly distract or mislead the jury from the determination it must make. *United States v. J. L. Peterson* (1974, 509 F.2d 408, 166 U.S. App. D.C. 75).

Before admitting medical testimony on issue whether a defendant's mental condition negated his ability to form the requisite mental state for first-degree murder, court should insist on a complete proffer of the medical testimony. *Id.*

The introduction or proffer of past criminal and anti-social actions is not admissible as evidence of mental disease unless accompanied by expert testimony, supported by showing of the concordance of a responsible segment of professional opinion, that the particular characteristics of these actions constitute convincing evidence of an underlying mental disease that substantially impairs behavioral controls. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

— Sufficiency

Evidence supported implied finding that murder took place in course of robbery, in prosecution in which defendant contended that evidence was equally consistent with lawful possession of goods or with larceny after the homicide. *J. C. Womack v. United States* (D.C. App. 1975, 339 A.2d 37).

In light of defendant's own admission, in murder prosecution, that he retrieved a pistol after fight with deceased and returned to the scene, where he waited approximately 30 minutes and then shot deceased, on ground that he

"wasn't going to take no chance at that particular time," evidence failed to present an issue on provocation such as would reduce the offense to manslaughter. *T. Hurt v. United States* (D.C. App. 1975, 337 A.2d 215).

Evidence as to circumstances surrounding and defendant's state of mind during stabbing of victim was sufficient on issue of deliberation and premeditation for submission of charge of first-degree murder. *United States v. J. L. Peterson* (1974, 509 F.2d 408, 166 U.S. App. D.C. 75).

Evidence that deceased's rings came into possession of one defendant immediately after deceased had been killed and evidence that defendant stated that she had gotten the rings from the victim and was going to keep them sustained conviction of both persons who kept the ring and person who aided in the murder for felony-murder on the basis of robbery. *United States v. M. Mackin* (1974, 502 F. 2d 429, 163 U.S. App. D.C. 427; cert. denied 95 S.Ct. 629, 419 U.S. 1052).

Evidence, including the testimony of an eyewitness involving all three defendants in the assault upon victim, was sufficient to support verdict of jury finding defendants guilty of felony-murder and assault with intent to commit rape while armed. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

Identification

Knowledge on part of an eyewitness that persons on trial were arrested for crime may be taken into account for crime may be taken into account where there is other indication of suggestivity, but mere fact that suspects are included within lineup and that witnesses know or assume this to be the case is an inescapable aspect of lineup identification procedure and does not, without more, provide reason for exclusion of pretrial and in-court identifications. *United States v. C. L. Pearson* (1973, 478 F. 2d 659, 155 U.S. App. D.C. 455).

Pretrial and in-court identifications of defendant by eyewitness to crime were not subject to exclusion by reason of fact that investigating officer told witness at lineup that she had "done well," where there was no reason to suppose that officer's remark was more than a comforting gesture to witness, who was, quite naturally, on edge, and jury had before it testimony as to (slightly more tentative) lineup identification and was likely to credit this, which was uninfluenced by subsequent remark, far more than taken for granted in-court identification. *Id.*

Impeachment

Refusal, in criminal prosecution, to admit testimony regarding effect of drug use on perception for purposes of impeaching testimony of accomplice, who testified for government and who was a heroin user, unless it was established that accomplice had used narcotics on day of offenses was not error. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Instructions

Where jury during deliberations sent questions to judge concerning felony-murder count, inquiring as to timing of formation of intent to rob, and trial court merely reread the murder statute and the standard instruction, and jury could have been left with impression that coincidence in time between murder and robbery was sufficient to support felony-murder conviction, there was error which could not be held harmless. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

In murder prosecution, in which it appeared that defendant shot another person six times at close range during a period of a minute to a minute and one-half, instruction defining malice as a state of mind showing a heart "regardless of social duty," rather than "regardless of the life and safety of others," as suggested in prior opinion of United States Court of Appeals, is not reversible error. *T. Hurt v. United States* (D.C. App. 1975, 337 A.2d 215).

Instruction defining premeditation as "the formation of the intent to kill" was neither prejudicial nor plain error on theory that it equated premeditation with intent to kill. *United States v. J. L. Peterson* (1974, 509 F.2d 408, 166 U.S. App. D.C. 75).

Although inclusion in standard first-degree murder charge of insanity instruction that in determining whether premeditation and deliberation has been proved beyond a reasonable doubt the jury might consider the

testimony as to the defendant's abnormal mental condition, coupled with instruction on role of an expert medical witness, would have been sufficient, giving of a more elaborate instruction which had been approved by defense counsel was not prejudicial and did not constitute plain error. *Id.*

In prosecution for felony murder against defendants who during armed robbery handcuffed 75-year-old victim who died on arrival at hospital shortly thereafter, instructions on felony-murder were not deficient in not requiring jury to find that death was a foreseeable result of defendants' behavior, since under this section malice is implied from commission of the robbery. *United States v. J. R. Branic* (1974, 495 F. 2d 1066, 162 U.S. App. D.C. 10).

Failure to give an accomplice instruction with regard to accomplices who testified for government was not plain error where nonaccomplice testimony corroborated accomplice testimony to significant extent against one accused and to lesser extent against another where accomplices did not appear to have extraordinary disposition to prevaricate. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Refusal to instruct that testimony of accomplices, who testified for government after having been granted immunity, should be considered with caution was reversible error. *Id.*

Absent waiver of instruction, failure, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to give immediate limiting instruction as to admissibility where testimony of arresting officer was admitted to impeach defendant's testimony that he had not stated that codefendant "lived across the street" was plain error requiring reversal, though general instruction on impeachment evidence was given in very long charge. *Id.*

In prosecution for first-degree murder and carrying dangerous weapon, jury instruction on sanity which stated that defendant would be immediately committed for mental examination, after which there would be another judicial determination as to whether he was suffering from mental illness at that time and whether he was dangerous to himself and others, and that if defendant was found to be suffering from mental illness but was not dangerous to himself or others he would be released from hospital, was proper. *United States v. R. W. Brown* (1973, 490 F. 2d 758, 160 U.S. App. D.C. 190).

Where hearsay statement circumstantially probative of declarant's state of mind involves extraneous factual elements, limiting instruction must always accompany its introduction into issue to insure that such factual matters are considered solely on issue of declarant's mental state and not for truth of matters contained therein. *Id.*

Felony-murder instruction which has been used in the District of Columbia jurisdiction, as well as the one proposed for use by the Junior Bar Association, reflects an understanding that the statute embraces occasions when the jury may properly be urged to find that the homicidal act fell outside the scope of the felonious crime which the parties undertook to commit; accordingly, it was error for the trial court to forbid defense counsel to argue to the jury that the fatal stabbing of the victim by one of the defendants was an unexpected response to his being slapped in the face by the victim, was independent of any common purpose to rape, and was without the scope of the felonious crime which the three defendants undertook to commit. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

Instruction that Government was required to prove that accused was of sound memory and discretion was not required in prosecution for violation of this section pertaining to felony murder. *United States v. L. Greene* (1973, 489 F. 2d 1145, 160 U.S. App. D.C. 21; cert. denied 95 S. Ct. 239, 419 U.S. 977).

Aiding and abetting instruction in felony-murder prosecution, in which defendants obtained instruction on second-degree murder as lesser included offense, was not reversible error for failure to instruct that defendants should be acquitted of second degree murder unless Government proved aiding and abetting in homicide as a specific crime, separate and apart from robbery. *United States v. L. T. Robinson* (1973, 475 F. 2d 376, 154 U.S. App. D.C. 265).

Court's instruction on second degree murder as lesser included offense of felony-murder was properly given where evidence so warranted and where defendants made timely request therefor. *Id.*

Evidence submitted is gauge against which propriety of lesser included offense instructions must be measured, but quantum of proof needed to justify giving instruction is but slight. *Id.*

Instruction that flight or running away does not "prove" guilt, given in preference to requested instruction that flight or concealment does not create presumption of guilt, was not prejudicial in view of instruction as whole. *Id.*

Joinder

Charges against defendant, accused of first-degree murder, and codefendant, charged with being an accessory after the fact by threatening a material witness, were not improperly joined in a single indictment, in view of allegation that defendants jointly participated in the same act; fact that count against codefendant was subsequently dismissed for lack of evidence did not infect the joinder itself. *J. L. Jackson v. United States* (D.C. App. 1974, 329 A. 2d 782; cert. denied 96 S. Ct. 95, 423 U.S. 851).

Jury

Exclusion of several prospective jurors for cause when they stated that their opposition to capital punishment was such that they would be unable to render a fair and impartial verdict as to defendant's guilt or innocence of first-degree murder was not prejudicial absent evidence that jurors who were seated and who convicted defendant of second-degree murder were not fair and impartial. *United States v. A. L. Marshall* (1972, 471 F. 2d 1051, 153 U.S. App. D.C. 83).

Malice

Malice aforethought is an element common to first and second-degree murder; the distinguishing feature between the crimes being that first-degree murder includes the elements of premeditation and deliberation while second-degree murder does not. *J. L. Butler v. United States* (D.C. App. 1974, 322 A. 2d 279).

Malice may be established by either of two standards: first, a subjective standard, asking whether defendant actually intended or foresaw that death or serious bodily harm would result from his act; and second, an objective, "reasonable man" standard, asking whether defendant should have foreseen that such result was likely, and it is for jury to determine whether requisite state of mind or negligent pattern of behavior existed. *P. Belton v. United States* (1967, 382 F. 2d 150, 127 U.S. App. D.C. 201).

Mental capacity

Jury may consider whether a defendant's mental condition negated his ability to form the requisite mental state for first-degree murder. *United States v. J. L. Peterson* (1974, 509 F.2d 408, 166 U.S. App. D.C. 75).

Question of defendant's mental responsibility for act of shooting another was for jury in prosecution for first-degree murder. *United States v. A. L. Marshall* (1972, 471 F. 2d 1051, 153 U.S. App. D.C. 83).

On appeal from first degree murder conviction, defense of diminished responsibility, based on contention that defendant's mental condition precluded premeditation, was rejected by panel of the Court of Appeals in light of prior rejection of that doctrine by the Court en banc and of affirmation by the Supreme Court of another judgment of the Court of Appeals rejecting such doctrine. *United States v. B. A. Bryant* (1972, 471 F. 2d 1040, 153 U.S. App. D.C. 72; cert. denied 93 S. Ct. 923, 409 U.S. 1112).

Merger of offenses

Where charge of felony murder included every essential fact element of charge of rescue of a federal prisoner, there had been a merger and thus imposition of consecutive sentence for rescue offense was improper. *United States v. L. Greene* (1973, 489 F. 2d 1145, 160 U.S. App. D.C. 21; cert. denied 95 S.Ct. 239, 419 U.S. 977).

Miranda rights

Officer, who was investigating a homicide that occurred a few blocks from where defendant resided, who was looking for leads in hope that defendant might be of some assistance, and who did not suspect that defendant was

implicated in murder and had no reason to do so, was not required to warn defendant about his right to counsel and to remain silent before talking to defendant at police lineup, and his failure to do so did not render all of defendant's subsequent statements to police on that day inadmissible. *United States v. C. E. Wiggins* (1975, 509 F.2d 454, 166 U.S. App. D.C. 121).

Plea

In considering whether to deny approval either to dismissal of cases outright or to a guilty plea to a lesser included offense, trial judge must provide reasonable exercise of discretion to justify departure from course agreed upon by prosecution and defense, and this involves fairness to the defense, such as protection against harassment, fairness to prosecution interest, as in avoiding disposition that does not serve due and legitimate prosecutorial interest, and protection of sentencing authority reserved to judge; judge's statement must identify particular interests that lead him to require defendant to go to trial. *United States v. R. L. Ammidown* (1973, 497 F. 2d 615, 162 U.S. App. D.C. 28).

Examination of record in which defendant, charged with first-degree murder and conspiracy to commit murder, reach an agreement with prosecution, to enter a plea of guilty to second-degree murder, in exchange for testifying in grand jury proceedings and pending trial of the alleged actual murderer who was believed by prosecution to be involved in another murder, showed that trial judge, who provided no statement of reasons, abused discretion by refusal to accept guilty plea to the second-degree murder charge following which defendant was convicted of the crimes of first-degree murder and felony-murder. *Id.*

Prosecutor's comments

Prosecutor's remark in closing argument that victim had been "shot down like a dog in the street" and his characterization of the killings as "executions" and "assassinations" were improper. *United States v. W. L. DeLoach, Sr.* (1974, 504 F. 2d 185, 164 U.S. App. D.C. 116; cert. denied 96 S. Ct. 2232, 426 U.S. —).

Although evidence in homicide prosecution did not directly support prosecutor's opening assertion that victim had distributed drugs for defendant, defendant was not substantially prejudiced by such unproven allegation where the statement was not repeated in closing argument and the trial judge carefully instructed the jury that the statements of counsel were not evidence and that their recollection of the evidence controlled. *J. L. Jackson v. United States* (D.C. App. 1974, 329 A. 2d 782; cert. denied 96 S. Ct. 95, 423 U.S. 851).

Prosecutor's closing statement that defendant was exploiting his position at Narcotics Treatment Administration to make contacts in furtherance of his illegal drug activities did not constitute prejudicial error, notwithstanding that no evidence was introduced in homicide prosecution that defendant was actually using his position to make drug contacts, where considerable evidence had been introduced concerning extensive drug dealings of defendant and others and his counsel did not object to the remarks on the ground that they improperly suggested that his client was exploiting his position. *Id.*

Prosecutorial statements, in complex murder trial with numerous witnesses, to the effect that the government's version of the case was uncontested were not of such character that the jury would naturally and necessarily take them to be a comment on the failure of the accused to testify and court's allowing such statements did not amount to prejudicial error. *T. Peoples v. United States* (D.C. App. 1974, 329 A. 2d 446).

Prosecutor's closing and rebuttal arguments which referred to defenses of insanity interposed by famous defendants in other cases and to actions of Hitler and Napoleon were improper and were so highly prejudicial as to require reversal. *United States v. W. E. Hawkins* (1973, 480 F. 2d 1151, 156 U.S. App. D.C. 259).

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and

was convicted of second-degree murder, would also be nullified. *Id.*

Right to counsel

Denial of accused's request for assistance of counsel in presentation of motion for new trial based upon newly discovered evidence that principal prosecution witness had been offered leniency by United States attorney in exchange for his testimony against accused was within trial judge's discretion where issue concerning whether witness' testimony had been given voluntarily had been raised and passed upon in prior appeal and accused had known at time of trial that the United States attorney and witness had struck plea bargain which had been rejected. *United States v. R. A. Lee* (1975, 513 F.2d 423, 168 U.S. App. D.C. 165; cert. denied 96 S. Ct. 225, 423 U.S. 916).

Search and seizure

Seizure of work pants in defendant's apartment following his arrest in connection with rape and murder, and following inspection of pants which disclosed "what we thought to be blood" was permissible under plain view rule where pants were lying on clothes hamper at time of inspection and seizure. *United States v. W. Sheard* (1972, 473 F. 2d 139, 154 U.S. App. D.C. 9; cert. denied 93 S. Ct. 2784, 412 U.S. 943).

Sentence

Imposition of three consecutive sentences of from 20 years to life for three convictions of murder in the first degree was improper where the three convictions arose from same killing. *United States v. R. A. Lee* (1975, 513 F.2d 423, 168 U.S. App. D.C. 165; cert. denied 96 S. Ct. 225, 423 U.S. 916).

While dual convictions of defendant for first-degree murder and premeditated murder arising out of one killing was permissible, defendant could not be given consecutive sentences for both. *United States v. R. L. Ammidown* (1973, 497 F. 2d 615, 162 U.S. App. D.C. 28).

Severance

Grant of severance was not required on ground that defendant could have called codefendant to testify that defendants were not together when homicide and robbery occurred where there was no intimation that codefendant would have been willing to testify at defendant's trial, and if codefendant were to testify, Government's impeaching statement which was inculpatory of defendant would probably have surfaced. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

Refusal to grant severance in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, was not prejudicial to defendant due to fact that evidence placing a codefendant at scene of crime was quantitatively and qualitatively greater than evidence against defendant where evidence against defendant was both substantial and compelling, jury was specifically instructed to determine guilt of each defendant by considering only his own conduct and evidence which applied to him and where verdicts demonstrated that jury fulfilled its obligation under charge. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Fact that there was conflict in accused's defenses, in that codefendants relied on separate alibi defenses and defendant admitted his presence at scene of offenses and in that such defendant's efforts to discredit testimony that he and a codefendant knocked out victim assertedly undermined such codefendant's alibi defense and fact that defendant did not testify and thus codefendants were precluded from cross-examining him did not so prejudice codefendants as to render refusal to grant severance an abuse of discretion where damaging implications of defendant's defense were corroborated by substantial testimony. *Id.*

Admission, in criminal prosecution in which a defendant did not testify, of admissible testimony as to such defendant's hearsay statements which incriminated codefendants did not require severance on ground that admission violated codefendants' right of confrontation where, even if codefendants were tried separately, such testimony would have been admissible and defendant probably would have invoked Fifth Amendment, where there was substantial other eyewitness testimony incrim-

inating codefendants and where, since defendant was an accomplice, reliability of his hearsay declaration was "inevitably suspect." *Id.*

Where count of indictment charging defendant with carrying pistol on day of his arrest was dismissed for failure of proof before case was submitted to jury and indictment was retyped, omitting count, defendant was not prejudiced by court's refusal to sever such properly joined count from counts charging felony murder, first-degree burglary and armed robbery. *United States v. J. M. Joyner* (1974, 492 F. 2d 650, 160 U.S. App. D.C. 384; cert. denied 95 S. Ct. 94, 419 U.S. 852).

Refusal to sever defendant's case from that of codefendant, who allegedly would not testify in behalf of defendant if severance were not granted, was not abuse of discretion where codefendant was not a witness to the shooting itself and although he could have refuted testimony of state's witness that he had discussed the crime with defendant prior to the shooting, thereby offering testimony on issue of premeditation, defendant's cross-examination cast strong doubt on such witness' credibility and defendant took the stand and denied that such discussion ever occurred. *J. L. Jackson v. United States* (D.C. App. 1974, 329 A. 2d 782; cert. denied 96 S. Ct. 95, 423 U.S. 851).

In prosecution of defendants on murder and rape charges, trial court did not abuse its discretion in denying motion of defendant brothers for a severance from codefendant, who had fatally stabbed the victim, notwithstanding defendants' claim that the evidence against the codefendant was much stronger than the evidence against them. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

Although defendant relied on alibi defense and codefendant maintained that defendant and he had been drinking at lounge and that defendant and victim had gone into parking lot by themselves before stabbing occurred, defendants were not prejudiced by joint trials on theory of irreconcilable defenses, where such defenses were subject to scrutiny on cross-examination, alibi defense was contradicted by witness' testimony and evidence that victim's type of blood had been found on defendant's shoe and jury was instructed to consider evidence individually against defendant and codefendant. *United States v. W. C. Hurt* (1973, 476 F. 2d 1164, 155 U.S. App. D.C. 217).

Witnesses

Trial court, which denied a defense motion during trial to have key prosecution witness, who was a chronic alcoholic, subjected to a psychiatric examination with respect to his competency, did not abuse its discretion in refusing to treat the witness as a person of actual or potential incompetency, notwithstanding the claims of defendants, in support of their motion, that the testimony given by the witness was highly confusing and that hospital records indicated he had a clinical history which rendered him wholly unreliable. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

Discretion of trial court to grant pretrial physical or mental examination of prospective witnesses should not be exercised in absence of substantial factual predicate for the same and upon substantial showing of need and justification. *United States v. D. T. Butler* (1971, 325 F. Supp. 886; aff'd 481 F. 2d 531, 156 U.S. App. D.C. 356).

In absence of substantial showing of need and justification, hearing on defense motion for pretrial physical and psychiatric examination of prospective government witnesses would not be continued to allow defendant to subpoena one of the witnesses, despite allegation that such witness had told defense counsel that witness was narcotic addict. *Id.*

— Discovery

Court had power to order Government in first-degree murder prosecution to produce names of alleged eyewitnesses to crime for use by the defense, where eyewitnesses were passersby on street, defense counsel satisfied requirement of materiality by establishing that he was unable to locate eyewitnesses, such witnesses were necessary for preparation of defense, discovery of eyewitnesses was not so burdensome as to be unreasonable, Government was given opportunity to oppose discovery motion, and safeguards for witnesses were provided in conditions imposed

in court's order. *United States v. W. J. Holmes* (D.C. App. 1975, 343 A.2d 272; rehearing denied 346 A.2d 517).

§ 22-2403. Murder in second degree.

NOTES TO DECISIONS

Assistance of counsel

In prosecution for second-degree murder, defense counsel's failure to obtain murder victim's prior criminal record, which contained convictions for carrying knives and would have arguably buttressed defendant's contention that she acted in self-defense, for reason that he believed that record was inadmissible, does not demonstrate ineffectiveness. *United States v. L. Agurs* (1976, 96 S. Ct. 2392, — U.S. —; rev'g 510 F. 2d 1249, 167 U.S. App. D.C. 28).

Assistance of defense counsel was not inadequate because of refusal, on tactical and other grounds, to cross-examine the Government's principal witness who was 15 years old at time of offense and 16 at time of trial because of some of the vacillations in her testimony, some contradictions and unwillingness to testify and fear for reprisals for her testimony since such factors were apparent to jury and they went to issue of her credibility and jury was a proper tribunal to weigh and consider them. *United States v. J. Clayborne* (1974, 509 F.2d 473, 166 U.S. App. D.C. 140).

Defendant was not denied his Sixth Amendment right to assistance of counsel because the court's refusal to admit defendant's statements at start of his testimony regarding what he had stated to police officer shortly after the murder made it impossible for the defendant to present his case "in the best light legally possible." *United States v. L. R. Smith* (1974, 490 F. 2d 789, 160 U.S. App. D.C. 221).

Bifurcated trial

Where defendant who was charged with murder and carrying a dangerous weapon contended during guilt phase of bifurcated trial that his killing of victim was due to rational belief that it was necessary because victim had threatened him with serious bodily harm, likelihood of prejudice was sufficient to require that second jury hear defendant's insanity defense. *United States v. J. Taylor* (1975, 510 F.2d 1283, 167 U.S. App. D.C. 62; rehearing denied 516 F.2d 1243, 170 U.S. App. D.C. 315).

Written verdict form which was submitted to and used by jury in insanity phase of bifurcated trial and which gave jury choice of determining whether to adhere to decision previously reached, namely, that defendant was guilty of second-degree murder and carrying a dangerous weapon, or to find defendant not guilty by reason of insanity tended somewhat to confuse two distinct issues of bifurcated trial and was improper. *Id.*

Confessions

Avowed conscious desire to cooperate with police is not the sort of compulsion that undermines voluntariness. *United States v. A. Cox* (1974, 509 F.2d 390, 166 U.S. App. D.C. 57).

Defendant did not establish that he lacked capacity to make knowing and intelligent waiver of Miranda rights, despite claims that he had insufficient education to comprehend significance of warnings and lacked capacity to make knowing waiver because he was intoxicated at time of interrogation, in view of his reading and discussion of warning form before judge and lack of testimony to support assertion of intoxication. *Id.*

Conviction of lesser offense

Where trial court, in prosecution for second-degree murder, gave full and proper instructions on self-defense and evidence was such that refusal to give manslaughter instruction constituted reversible error, case is an appropriate one for the Government to consider its consent to entry of judgment of guilty of manslaughter on remand and for the trial court to consider such a final disposition. *B. L. Pendergrast v. United States* (D.C. App. 1975, 332 A.2d 919).

Defense

Where only evidence linking defendant with homicides was testimony of confessed accessory who was granted immunity, defendant's theory that accessory committed the killings and lied about defendant to cover up his own

guilt was supported by testimony of eye-witnesses who described a man fitting accessory's description as being near scene of crimes, and defense counsel's closing argument seeking to present such theory did not supplement or mistate the record but merely suggested that jury draw certain inferences, restriction of closing argument so as to prevent defense counsel from suggesting that accessory committed the murders impaired defendant's constitutional right to a closing argument in his behalf and was not harmless beyond reasonable doubt. *United States v. W. L. DeLoach, Sr.* (1974, 504 F. 2d 185, 164 U.S. App. D.C. 116; cert. denied 96 S. Ct. 2232, 426 U.S. —).

Due process

Reindictment of defendants for first-degree murder, after their first trial on charge of second-degree murder had ended with a declaration of mistrial granted on motion of defense counsel, denied defendants due process of law, absent any showing of justification for the increase in the degree of the crime charged. *United States v. C. Jamison, Jr.* (1974, 505 F. 2d 407, 164 U.S. App. D.C. 300).

Since it could not be said that defendants, whose first trial on charge of second-degree murder ended with a declaration of mistrial and who were then reindicted and found guilty on charge of first-degree murder, were not prejudiced by having to defend, on the retrial, against the higher, illegal charge, the Court of Appeals would not, under those circumstances, remand the case with directions to simply enter convictions for second-degree murder. *Id.*

Elements of offense

Murder in the first degree is intentional homicide done deliberately and with premeditation, and homicide that is intentional but "impulsive," not done after "reflection and meditation", is murder in the second degree. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

Evidence—Abnormal mental condition

Even when there is no defense of insanity, expert testimony of abnormal mental condition will be admissible when it bears on the existence of specific mental element necessary for a crime, provided trial judge determines that the testimony is grounded in sufficient scientific support, and would aid jury in reaching decision on ultimate issues; overruling *Fisher v. United States*, 80 U.S. App. D.C. 96, 149 F. 2d 28. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

A defendant who presents evidence that his abnormal condition of the mind has substantially impaired behavioral controls is exculpated if his behavioral controls were not only substantially impaired but were impaired to such extent that he lacked substantial capacity to conform his conduct to the law. *Id.*

— Admissibility

Government's efforts to locate critical witness were insufficient and failed to justify, on ground of witness' "unavailability," the admission of her preliminary hearing testimony, where she was physically and mentally capable of testifying and was apparently within court's jurisdiction, where the prosecution never represented that she expressed any unwillingness to testify, where the prosecution, in attempting to locate her, failed to inquire at local hospitals or area police departments, and where the Government admitted that its efforts were limited because of a shortage of available policemen. *United States v. P. Lynch* (1974, 499 F. 2d 1011, 163 U.S. App. D.C. 6).

Given trial context and lack of objection, no prejudicial error was established in trial court's refusal to admit arrest record of deceased, in homicide prosecution, there being no crime of violence on such record. *United States v. M. E. Perkins* (1974, 498 F. 2d 1054, 162 U.S. App. D.C. 321).

Given trial context and lack of objection, no prejudicial error was established in admission of testimony, in homicide prosecution, as to defendant's postarrest statement, no question having been raised at trial that statement should be paraphrased by detective rather than read. *Id.*

In murder prosecution, wherein defendant proposed to take the stand first and then introduce a written statement which he had made to police officer that defendant had killed victim in self-defense, for purpose of corroborating what defendant was going to state on the stand,

such statement was properly excluded at that time as hearsay and as corroborating an exculpatory statement that was self-serving. *United States v. L. R. Smith* (1974, 490 F. 2d 789, 160 U.S. App. D.C. 221).

In murder prosecution, trial court acted within its discretion in admitting two black and white photographs of inside of house showing where victim was standing when he was shot and where he fell, where photographs were probative of place where victim was shot, and were material on issues in the case. *Id.*

In murder prosecution, admission of testimony by decedent's wife that her marriage was trouble-free did not constitute plain error and hence was not reviewable, where no objection to its admission was made. *Id.*

In view of overwhelming evidence of malice aforethought, premeditation and deliberation, error in allowing defendant's daughter to testify that she had stated to defendant, immediately following the killing, that defendant had threatened deceased before and he had meant to do it was harmless beyond a reasonable doubt. *J. L. Butler v. United States* (D.C. App. 1974, 322 A. 2d 279).

Evidence that defendant had previously beaten his child was admissible in prosecution for causing death of the child. *United States v. M. L. Grady* (1973, 481 F. 2d 1106, 157 U.S. App. D.C. 6).

Although advisability of permitting certain testimony, including descriptions of victim's neck wound, might be in doubt, taken as a whole there was no abuse of discretion in permitting evidence of murder of seven-year-old girl to be introduced, where Government's proof went both to establishing elements of crime and to showing circumstantially that defendant perpetrated crime in a manner inconsistent with his defense of insanity, and its probative value thus sufficiently outweighed danger of unfair prejudice to justify its admission. *United States v. J. L. Cockerham* (1973, 476 F. 2d 542, 155 U.S. App. D.C. 97).

Handwritten statement which defendant made to a psychologist who appeared as an expert witness for defense, who used statement in court to refresh his recollection, and who acknowledged that the statement was a part of basis for his diagnosis was not inadmissible, being an appropriate subject for cross-examination and especially important for proper jury consideration of insanity defense. *Id.*

Admission of evidence of defendant's sexual assault on decedent did not constitute reversible error by reason of fact that court eventually dismissed indecent liberties charge for insufficient evidence, a claim defendant had made in his pretrial motion, where record revealed sufficient medical evidence to support decision to allow Government to proceed with its case in first instance, and testimony it brought forth merely added testimony it brought forth merely added detail to what jury was aware of generally from defendant's own admissible statement to a psychologist. *Id.*

In prosecution for murder, deceased's prior conviction based on plea of guilty to an indictment that charged that deceased did "beat, abuse and otherwise willfully maltreat" his six-year-old son was admissible to prove deceased's violent character and court's barring of the evidence was improper. *United States v. J. H. Burks* (1972, 470 F. 2d 432, 152 U.S. App. D.C. 284).

Evidence of the deceased's violent character, including evidence of specific violent acts, is admissible where a claim of self-defense is raised and such evidence is relevant on the issue of who was the aggressor and, where there is evidence that defendant knew of deceased's character, on the issue of whether or not defendant reasonably feared he was in danger of imminent great bodily injury. *Id.*

Where defense attempted to introduce evidence of deceased's violent and dangerous character, specifically evidence that deceased had killed his own six-year-old son in 1965, through testimony of deceased's wife and neither privilege of husband or wife not to testify for or against the other nor privilege not to reveal confidential marital communications was applicable, court erred in barring the testimony and where defendant's sole defense was self-defense such error was prejudicial. *Id.*

— Character

Where alleged rape of witness' wife by defendant, who was charged with second-degree murder, was already before jury, having been adduced both by prosecutor and by

defense counsel, trial judge immediately instructed jury to disregard incompetent testimony of government witness called in rebuttal on issue of character as to alleged rape of witness' wife by defendant, and at close of Government's case court cautioned jury as to weight to be accorded character evidence that had been introduced, such incompetent testimony is not reversible error. *C. N. Lloyd, Jr. v. United States* (D.C. App. 1975, 333 A.2d 387).

—Circumstantial

That Government's evidence is largely circumstantial is no bar to its sufficiency. *United States v. A. Cox* (1974, 509 F.2d 390, 166 U.S. App. D.C. 57).

In view of trial context and lack of objection, no prejudicial error was established when trial court permitted prosecutor, in homicide prosecution, to ask as to character of deceased, after defense counsel had initiated this line of inquiry. *United States v. M. E. Perkins* (1974, 498 F. 2d 1054, 162 U.S. App. D.C. 321).

—Disclosure to defense

Prosecutor's failure to tender second-degree murder victim's criminal record to defense did not deprive defendant of fair trial where it appeared that record was not requested by defense counsel and gave no rise to inference of perjury, trial judge remained convinced of defendant's guilt beyond reasonable doubt after considering criminal record in context of entire record, and trial judge's firsthand appraisal of entire record was thorough and entirely reasonable. *United States v. L. Agurs* (1976, 96 S. Ct. 2392, — U.S. —; rev'g 510 F. 2d 1249, 167 U.S. App. D.C. 28).

—Expert testimony

Before copies of paintings of well-known artists could be exhibited to jury for purpose of refuting appropriateness of defense psychiatrist's use of paintings of defendant in aid of diagnosing his mental condition, paintings of defendant, if available, should have been exhibited to jury for comparison. *United States v. J. Taylor* (1975, 510 F.2d 1283, 167 U.S. App. D.C. 62; rehearing denied 516 F.2d 1243, 170 U.S. App. D.C. 315).

—Insanity

Where defendant's brother and sister, through contacts with defendant over period of years prior to shooting of defendant's wife, had a proper foundation for expressing an opinion as to defendant's sanity, and from time defendant was indicted he had been continuously confined in hospital and had been diagnosed as suffering from paranoid schizophrenia, it could not be said that failure to permit brother and sister to give their lay opinions as to defendant's sanity did not seriously prejudice defendant. *United States v. G. E. Pickett* (1972, 470 F. 2d 1255, 152 U.S. App. D.C. 346).

—Mental disease or defect

The introduction or proffer of past criminal and antisocial actions is not admissible as evidence of mental disease unless accompanied by expert testimony, supported by showing of the concordance of a responsible segment of professional opinion, that the particular characteristics of these actions constitute convincing evidence of an underlying mental disease that substantially impairs behavioral controls. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

—Rebuttal

Where defendant in second-degree murder prosecution himself contended in his direct testimony that he had only recently begun carrying gun, trial court did not err in allowing prosecution thereafter to introduce rebuttal testimony indicating that defendant had been carrying gun for at least three weeks prior to shooting of victim. *C. R. Curry v. United States* (D.C. App. 1974, 322 A. 2d 268).

—Sufficiency

Evidence that defendant was armed and was threatening one individual with serious bodily injury, that he was aware that he was being followed by uniformed special officer and that defendant turned and shot uniformed officer was sufficient, apart from issue of mental responsibility, to support verdict finding defendant guilty of second-degree murder of the officer and of carrying a dangerous weapon. *United States v. J. Taylor* (1975, 510 F.2d 1283, 167 U.S. App. D.C. 62; rehearing denied 516 F.2d 1243, 170 U.S. App. D.C. 315).

In murder prosecution against two defendants one of whom shot the victim, evidence including showing of continuous association of codefendant with defendant who shot the victim, their furtive consultation immediately preceding the murder and codefendant's holding of bags of valuables that other defendant carried moments earlier and standing close by while the defendant fought with and shot the victim sustained conviction of second-degree murder. *United States v. J. Clayborne* (1974, 509 F.2d 473, 166 U.S. App. D.C. 140).

Evidence sustained conviction for second-degree murder, although it was largely circumstantial. *United States v. A. Cox* (1974, 509 F. 2d 390, 166 U.S. App. D.C. 57).

Impeachment

No improper impeachment of defendant in second-degree murder prosecution took place when prosecutor inquired as to previous terms of imprisonment served by defendant only after prisoner had already testified to such confinements in his direct testimony. *C. R. Curry v. United States* (D.C. App. 1974, 322 A. 2d 268).

Indictment

Except in extraordinary circumstances, an indictment is not open to challenge on ground that it was not supported by adequate evidence. *United States v. A. L. Marshall* (1972, 471 F. 2d 1051, 153 U.S. App. D.C. 83).

Inferences

In prosecution for second-degree murder arising from shooting incident, jury could consider defendant's prior aggressive behavior toward deceased during altercation which had occurred an hour prior to the shooting incident and could infer that defendant had harbored malice toward the deceased or that defendant had been more likely to have been the aggressor in the subsequent encounter and could consider such evidence in weighing defendant's testimony that deceased had instigated the fatal confrontation. *United States v. L. R. Grover* (1973, 485 F. 2d 1039, 158 U.S. App. D.C. 260).

Insanity defense

Where evidence suggested that defendant might have been unable to control himself at time he committed murder and other bizarre acts, trial court characterized acts as "impulsive and frenzied" when it reduced charge from first-degree to second-degree murder, defense counsel believed insanity defense appropriate but refused to raise it only because defendant prohibited him from doing so, reason for defendant's opposition was the belief that insanity defense would impugn on the credibility of his racial and political views and testimony of two of four physicians who examined defendant expressed views supportive of insanity plea, trial court acted properly in ordering hearing to determine if insanity defense should be raised sua sponte. *United States v. T. L. Robertson* (1974, 507 F. 2d 1148, 165 U.S. App. D.C. 325).

Where trial court at hearing to determine whether court should sua sponte raise insanity defense, which defendant refused to raise, heard only the conclusory medical testimony of two psychiatrists opposing imposition of defense and did not probe the basis of their conclusions as to defendant's sanity and court did not entertain testimony of other two examining psychiatrists who found defendant mentally ill and where trial court did not set forth in reasonable detail reasons for ultimate determination not to raise insanity defense, case would be remanded for court to hear testimony of psychiatrist who did not testify and make a complete statement as to reasons for determination. *Id.*

Instructions

Evidence, including defendant's testimony that he had seen victim wave his gun earlier on date of incident at issue and that he knew that victim had previously shot someone else in the neighborhood, as well as testimony that heated words were exchanged at fateful meeting of defendant and victim and that victim was moving his hand toward his pocket when defendant struck him with baseball bat, constituted some evidence that defendant lacked requisite malice for second degree murder; hence, failure to give requested instruction on lesser included offense of manslaughter is reversible error. *B. L. Pendergrast v. United States* (D.C. App. 1975, 332 A. 2d 919).

In murder prosecution, the trial court properly denied a missing witness instruction with respect to the absence

of a certain person as he was not within the "peculiar" control of the Government, and the court also properly refused to allow defense to comment on his absence. *United States v. J. Clayborne* (1974, 509 F. 2d 473, 166 U.S. App. D.C. 140).

Any error in instructions on recklessness as basis for criminal responsibility for homicide was not plain error, reviewable without objection, and was not substantially prejudicial. *United States v. A. Cox* (1974, 509 F. 2d 390, 166 U.S. App. D.C. 57).

In homicide prosecution, malice instruction was incorrect insofar as instructing that wrongful act if intentionally done is done with malice aforethought, and was also erroneous in defining malice as state of mind showing a heart regardless of social duty. *United States v. M. E. Perkins* (1974, 498 F. 2d 1054, 162 U.S. App. D.C. 321).

Instructing jury that it could recommend psychiatric treatment if it returned a guilty verdict was improper, in a case where sole issue was question of criminal responsibility. *United States v. S. R. Patrick* (1974, 494 F. 2d 1150, 161 U.S. App. D.C. 231).

Plain error in instructions did not occur in second-degree murder prosecution where instructions given were standard instructions on manslaughter and second-degree murder and no objection was made to charge. *C. R. Curry v. United States* (D.C. App. 1974, 322 A. 2d 268).

Trial court's instruction in second degree murder prosecution that "'malice' is a state of mind showing a heart regardless of social duty," was harmless error where death was caused by knife wound. *United States v. M. H. Hinkle* (1973, 487 F. 2d 1205, 159 U.S. App. D.C. 334).

It is improper in homicide prosecution to instruct that "malice" is state of mind showing heart regardless of social duty, a mind deliberately bent on mischief, a generally depraved, wicked and malicious spirit. *Id.*

Evidence in second-degree murder prosecution did not warrant submission to the jury of the issue of the difference in the nature of recklessness required for second-degree murder, and that required for manslaughter. *Id.*

In prosecution for second-degree murder, trial court's omission to instruct on qualification to general rule that defense of self-defense is not available to one who provokes difficulty was not improper where there had been no request for such instruction and no testimony that defendant had been aggressor during incident and then retreated and no such version of incident should naturally have suggested itself to trial judge. *United States v. L. R. Grover* (1973, 485 F. 2d 1039, 158 U.S. App. D.C. 260).

Failure of trial court to clarify instruction that defense of self-defense is not available to one who provokes difficulty by informing jury that, in determining whether defendant had been aggressor, they were not to consider his conduct at time of earlier altercation which had taken place an hour prior to shooting was not prejudicial where earlier altercation had not loomed large at trial and possible ambiguity of instruction as given was offset by its context. *Id.*

Evidence indicating that defendant's beating of his child was not in a passion of hate and rage but with an intent to discipline that was carried to such unreasonable extremes as to involve a "gross deviation" and extreme risk of harm and death warranted instruction on manslaughter, where jury could have found that defendant indicted for murder lacked the kind of awareness of risk involved in the malice requirement of murder. *United States v. M. L. Grady* (1973, 481 F. 2d 1106, 157 U.S. App. D.C. 6).

Aiding and abetting instruction in felony-murder prosecution, in which defendants obtained instruction on second-degree murder as lesser included offense, was not reversible error for failure to instruct that defendants should be acquitted of second degree murder unless Government proved aiding and abetting in homicide as a specific crime, separate and apart from robbery. *United States v. L. T. Robinson* (1973, 475 F. 2d 376, 154 U.S. App. D.C. 265).

Court's instruction on second degree murder as lesser included offense of felony-murder was properly given where evidence so warranted and where defendants made timely request therefor. *Id.*

Evidence submitted is gauge against which propriety of lesser included offense instructions must be measured, but

quantum of proof needed to justify giving instruction is but slight. *Id.*

Instruction that flight or running away does not "prove" guilt, given in preference to requested instruction that flight or concealment does not create presumption of guilt, was not prejudicial in view of instruction as whole. *Id.*

Instruction concerning distinction between manslaughter and second-degree murder and factors that will reduce offense of murder to manslaughter are appropriate only when defendant is charged with second-degree murder as well as manslaughter. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Where there was evidence of provocation, instruction repeating that provocation must be adequate before defendant could be acquitted of second-degree murder and convicted instead of manslaughter and manslaughter instruction containing detailed statement of several issues which were clearly important for jury to consider when deciding whether to convict defendant of second-degree murder were confusing, but did not require reversal of conviction, where confusion might have prejudiced government as well as defendant. *Id.*

If defendant charged with second-degree murder is entitled to charge on lesser included offense of manslaughter, instructions must take a form which distinguish clearly between those factors which constitute defenses to second-degree murder and those which constitute the elements of manslaughter, and which clearly instruct jury that when defense to second-degree murder—adequate provocation, for example—is put in issue, government must prove its absence beyond a reasonable doubt. *Id.*

Court of Appeals stated sample instruction on provocation is to be given in cases in which accused is charged with second-degree murder and manslaughter and adequate provocation is put in issue. *Id.*

Where defendant is charged with second-degree murder and manslaughter, once some evidence of provocation is in the case, whether introduced by government or defense, defendant is entitled to instruction on provocation and manslaughter, burden of persuading jury of absence of provocation is on government, and jury is entitled to clear instruction to that effect. *Id.*

In prosecution for second-degree murder, wherein at first part of trial jury found that defendant had killed two people with malice, defendant, after expert witnesses testified at insanity hearing, was not entitled to instruction permitting jury to reopen question of malice and stating that mental unsoundness, although insufficient to entitle accused to acquittal under legal test of responsibility, may nevertheless be sufficient to prevent accused from forming malice aforethought and thus diminish defendant's responsibility or reduce the grade of the offense. *Id.*

In insanity hearing held in connection with prosecution for murder occurring after one of victims had made racial remark, instruction that "we are not concerned with a question of whether or not a man has a rotten social background," taken in context, amounted only to a reminder that issue was not the shortcomings of society generally, but rather defendant's criminal responsibility for illegal acts; such instruction did not require reversal on theory that it had effect of telling jury to disregard any evidence bearing upon conditions under which defendant's life had been lived. *Id.*

Jury

When a judge is asked whether jury can make a recommendation of leniency or treatment, he should inform the jury that it is the jury's responsibility to determine guilt or innocence on basis of evidence that has been presented, and that jury is not to consider the question of punishment in arriving at its verdict, and that if defendant is found guilty then the court will determine the appropriate sanction. *United States v. S. R. Patrick* (1974, 494 F. 2d 1150, 161 U.S. App. D.C. 231).

Exclusion of several prospective jurors for cause when they stated that their opposition to capital punishment was such that they would be unable to render a fair and impartial verdict as to defendant's guilt or innocence of first-degree murder was not prejudicial absent evidence that jurors who were seated and who convicted defendant

of second-degree murder were not fair and impartial. *United States v. A. L. Marshall* (1972, 471 F. 2d 1051, 153 U.S. App. D.C. 83).

Fact that three of the jurors in defendant's case had served on jury which two days earlier had been "castigated" by another judge for rendering a verdict of not guilty did not result in reversible error. *United States v. W. G. Kyle* (1972, 469 F. 2d 547, 152 U.S. App. D.C. 141; cert. denied 93 S. Ct. 920, 409 U.S. 1117).

Where prosecutor who knew that three jurors in case had served on a jury which only two days earlier had been "castigated" by another judge for rendering a verdict of not guilty was concerned primarily with jurors' unfavorable attitude to the prosecution rather than with the speculative effect of the comments of the previous judge, prosecutor's failure to transmit to defense counsel his knowledge that three jurors had been members of the previous jury and that previous jury had been scolded by the other judge was not ground for reversal of conviction. *Id.*

Malice

Even in absence of subjective intent to kill, malice may be determined by application of an objective standard, where conduct is reckless and wanton and a gross deviation from reasonable standard of care, of such nature that jury is warranted in inferring that defendant was aware of serious risk of death or serious bodily harm. *United States v. A. Cox* (1974, 509 F. 2d 390, 166 U.S. App. D.C. 57).

Malice aforethought is an element common to first and second-degree murder; the distinguishing feature between the crimes being that first-degree murder includes the elements of premeditation and deliberation while second-degree murder does not. *J. L. Butler v. United States* (D.C. App. 1974, 322 A. 2d 279).

Malice, an essential element of second-degree murder, may be inferred from use of dangerous weapon such as gun. *C. R. Curry v. United States* (D.C. App. 1974, 322 A. 2d 268).

"Malice" is state of mind showing a heart that is without regard for the life and safety of others. *United States v. M. H. Hinkle* (1973, 487 F. 2d 1205, 159 U.S. App. D.C. 334).

The term "malice" in second-degree murder includes recklessness where defendant had awareness of serious danger to life and displayed wanton disregard for human life. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

Evidence justified finding of malice warranting conviction of second-degree murder rather than manslaughter, in case arising out of shooting following one victim's racial remark, in view of testimony of surviving victims that all victims were standing motionless staring at codefendant's gun when defendant came in, drew his gun, and began firing. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

If malice is proved beyond reasonable doubt and no affirmative defense applies, defendant who kills a human being is guilty of murder; if malice is not proved, he is guilty of manslaughter. *Id.*

Malice may be established by either of two standards: first, a subjective standard, asking whether defendant actually intended or foresaw that death or serious bodily harm would result from his act; and second, an objective, "reasonable man" standard, asking whether defendant should have foreseen that such result was likely, and it is for jury to determine whether requisite state of mind or negligent pattern of behavior existed. *P. Belton v. United States* (1967, 382 F. 2d 150, 127 U.S. App. D.C. 201).

Mistrial

Fact that psychologist, on staff of government hospital, was unable to give legally admissible testimony about a court-ordered commitment to the hospital for examination did not entitle defendant to mistrial, where trial court did not terminate opportunity of defense to elicit competent testimony from psychologist, most, if not all, of difficulty was due to failure of communication, ending in evident mutual exasperation, between defense counsel and witness, and prejudice was minimal, since government psychiatrist testified concerning psychological testing. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Prejudicial error

Court did not commit prejudicial error in prosecution for second-degree burglary when it made gratuitous comment during cross-examination of complaining witness to effect that there are any number of ways to open a lock without a key. *J. P. Hazel v. United States* (D.C. App. 1974, 319 A. 2d 136).

Even if trial court committed prejudicial error in making gratuitous comment during burglary prosecution that there are any number of ways to open a lock without a key, any error was cured by court's instructing jury that it should not have made statement, that jury should disregard it, and that only evidence was that coming from witnesses. *Id.*

Prosecutor—Comments

Statement of prosecutor during insanity phase of bifurcated trial that defendant stopped when ordered to do so by police officer and, therefore, conformed his behavior to the requirements of the law was improper. *United States v. J. Taylor* (1975, 510 F. 2d 1283, 167 U.S. App. D.C. 62; rehearing denied 516 F. 2d 1243, 170 U.S. App. D.C. 315).

In prosecution for second-degree murder, allowing prosecutor's remarks made during closing and rebuttal arguments concerning alleged purchase of bootleg liquor by defendant for his grandfather and a horse race, which were not objected to at trial, to stand unmodified is not error, let alone "plain error" noticeable for first time on appeal. *C. N. Lloyd, Jr. v. United States* (D.C. App. 1975, 333 A. 2d 387).

Prosecutor's remark in closing argument that victim had been "shot down like a dog in the street" and his characterization of the killings as "executions" and "assassinations" were improper. *United States v. W. L. DeLoach, Sr.* (1974, 504 F. 2d 185, 164 U.S. App. D.C. 116; cert. denied 96 S. Ct. 2232, 426 U.S. —).

Prosecutor's closing and rebuttal arguments which referred to defenses of insanity interposed by famous defendants in other cases and to actions of Hitler and Napoleon were improper and were so highly prejudicial as to require reversal. *United States v. W. E. Hawkins* (1973, 480 F. 2d 1151, 156 U.S. App. D.C. 259).

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and was convicted of second-degree murder, would also be nullified. *Id.*

Where critical issue in homicide prosecution was matter of self-defense, action of government prosecutor in stating to subpoenaed defense witness, an eyewitness to killing, that such witness should see independent counsel and that if witness testified as indicated by other testimony then he could or would be prosecuted for carrying a concealed weapon, obstructing justice and as an accessory to murder was prejudicial to defendant who was entitled to have such witness put on stand without interference or intimidation by prosecutor, and interests of justice also required that the conviction of codefendant, who was convicted on theory of aiding and abetting defendant, should also be reversed. *United States v. C. L. Smith* (1973, 478 F. 2d 976, 156 U.S. App. D.C. 66).

Provocation

When defendant is charged with second-degree murder and manslaughter and defendant, or government, has introduced evidence of provocation, government must prove absence or inadequacy of provocation beyond a reasonable doubt and it should be explained to jury that provocation is not element of manslaughter, whether voluntary or involuntary, but a defense to second-degree murder. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

The government is not required to disprove provocation in its case in chief, unless its own evidence would support a finding of adequate provocation and, if defense introduces some evidence of provocation, government will have an opportunity to rebut. *Id.*

Self-defense

Defendant who threatened one individual with bodily harm and who was being pursued by uniformed special police officer had no right of self-defense to stand his ground and mortally wound the officer; situation between defendant and officer was of defendant's creation and placed him under obligation to indicate withdrawal from or abatement of confrontation. *United States v. J. Taylor* (1975, 510 F. 2d 1283, 167 U.S. App. D.C. 62; rehearing denied 516 F. 2d 1243, 170 U.S. App. D.C. 315).

Instigator of an encounter that ultimately proves fatal may claim self-defense if, prior to fatal blow, he has attempted in good faith to disengage himself from the altercation and has communicated his desire to do so to his opponent. *United States v. L. R. Grover* (1973, 485 F. 2d 1039, 158 U.S. App. D.C. 260).

Effect of disengagement of parties from altercation which had occurred one hour prior to fatal shooting was to restore them to status quo ante, deceased's privilege of self-defense as to earlier assault by defendant had dissipated at time of fatal shooting and any attack he might have launched upon defendant would have constituted unlawful retaliation; thus, any disability of defendant due to his prior aggression had been lifted at time of the fatal shooting and he was not precluded from raising defense of self-defense with respect to the fatal shooting. *Id.*

Severance

In order to assert that statement admissible solely against codefendants prejudicially implicated defendant, he must establish that statement admissible against codefendants directly implicated him, that statement was made by one whose interest was adversely affected and who was not government informant, and that statement itself was as powerfully incriminating as a confession, and there must be no independent evidence of guilt. *M. Brabham v. United States* (D.C. App. 1974, 326 A.2d 254; cert. denied 95 S. Ct. 1993, 421 U.S. 989).

Admission of hearsay statement of codefendant that he, defendant and others were going to kill prosecution witness, did not so prejudicially affect defendant as to justify severance of his case. *Id.*

Although defendant relied on alibi defense and codefendant maintained that defendant and he had been drinking at lounge and that defendant and victim had gone into parking lot by themselves before stabbing occurred, defendants were not prejudiced by joint trials on theory of irreconcilable defenses, where such defenses were subject to scrutiny on cross-examination, alibi defense was contradicted by witness' testimony and evidence that victim's type of blood had been found on defendant's shoe and jury was instructed to consider evidence individually against defendant and codefendant. *United States v. W. C. Hurt* (1973, 476 F. 2d 1164, 155 U.S. App. D.C. 217).

Speedy trial

Despite the 31-month delay between defendant's arrest and his trial, he was not denied his constitutional right to a speedy trial, where a major portion of the delay was caused by his own tactical maneuvering, where no intentional dilatory practices could be ascribed to the Government, where no demand for a speedy trial was made until most of the delay complained of had already occurred, and where only a tenuous demonstration of prejudice was shown. *United States v. P. Lynch* (1974, 499 F.2d 1011, 163 U.S. App. D.C. 6).

Variance

Although indictment alleged that defendant had shot another with a pistol, thereby causing injuries from which individual died, whereas proof established that fatal weapon was a sawed-off shotgun, where no suggestion was made that defendant was in any way prejudiced by mistake in indictment and, from statements of witnesses and grand jury testimony made available to him before trial, defendant knew what proof would be, variance was not fatal. *United States v. A. L. Marshall* (1972, 471 F. 2d 1051, 153 U.S. App. D.C. 83).

Witnesses

The refusal of the Government to supply a list of witnesses was harmless error where the only significant witness was known to the defense. *United States v. J. Clayborne* (1974, 509 F. 2d 473, 166 U.S. App. D.C. 140).

— Sequestration

Presence of prosecution witnesses in courtroom during voir dire and brief period of pretrial argument was not shown to constitute reversible error. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

§ 22-2404. Punishment for murder in first and second degrees.**NOTES TO DECISIONS****Allocation**

Where counsel and court at original sentencing of defendant were under mistaken view that defendant could not be sentenced under the Youth Corrections Act, and on remand for consideration of possibility of sentencing under the Youth Corrections Act defendant was not granted right of allocation, case would be remanded to trial court to afford defendant his right of allocation. *United States v. W. Howard* (1972, 470 F. 2d 374, 152 U.S. App. D.C. 226).

Death penalty

Sentence to death by electrocution was illegal. *United States v. R. A. Lee* (1973, 489 F. 2d 1242, 160 U.S. App. D.C. 118).

§ 22-2405. Punishment for manslaughter.**NOTES TO DECISIONS****Confessions**

Where defendant, before being charged or arrested for any crime and without interrogation or coercion of any sort, stated, in reply to police officer's mere request that he identify himself, that he had killed person at given address, statement was voluntarily given and admissible in evidence despite fact that defendant was admittedly inebriated at time statement was made. *United States v. J. Bennett* (1974, 495 F. 2d 943, 161 U.S. App. D.C. 363).

Conviction of lesser offense

Where trial court, in prosecution for second-degree murder, gave full and proper instructions on self-defense and evidence was such that refusal to give manslaughter instruction constituted reversible error, case is an appropriate one for the Government to consider its consent to entry of judgment of guilty of manslaughter on remand and for the trial court to consider such a final disposition. *B. L. Pendergrast v. United States* (D.C. App. 1975, 332 A. 2d 919).

Defenses

Only defense to charge of causing another's death—aside from self-defense, insanity, duress and so forth—is that the homicide was inadvertent and that defendant's negligence, if any, was not sufficient to convict him of involuntary manslaughter. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Definition of manslaughter

In absence of statutory definition, common-law definition of manslaughter is used in the District of Columbia. *United States v. C. L. Pender* (D.C. App. 1973, 309 A. 2d 492).

"Involuntary manslaughter" is a killing without justification or excuse. *Id.*

"Manslaughter" is the unlawful, that is, unexcused, killing of human being without malice. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

— Involuntary manslaughter

"Involuntary manslaughter" is unlawful killing which is unintentionally committed, that is, there is no intent to kill or to do bodily injury, and the crime may occur as result of an unlawful act which is a misdemeanor involving danger of injury, as result of a lawful act performed in an unlawful way, or as result of omission to perform a legal duty. *United States v. D. Bradford* (D.C. App. 1975, 344 A. 2d 208).

— Voluntary manslaughter

"Voluntary manslaughter" is unlawful killing committed with general intent to do the act which caused the death, rather than a specific intent to cause death; thus,

even though accused did not intend to kill, he did intend to use such force against the decedent as would endanger him. *United States v. D. Bradford* (D.C. App. 1975, 344 A. 2d 208).

Evidence—Sufficiency

Evidence, including testimony of defendant that during a heated argument with her brother she went to kitchen for a knife in order to "scare him" and that she struck her brother with her fist as she was holding knife in her hand, was sufficient to support conviction of manslaughter. *United States v. P. Dent* (1973, 477 F. 2d 447, 155 U.S. App. D.C. 278).

Indictment—Separate counts

Although defendant can properly be charged with both voluntary manslaughter and involuntary manslaughter in same indictment, duplicitous count is improper in that, upon conviction, it would not be clear to which crime guilty verdict referred and thus what penalty should be imposed, it would hamper both judge and jury in considering evidence, general verdict of guilty would not reveal whether defendant was unanimously found guilty of all offenses charged, right of protection against double jeopardy might be violated and it might deny right to notice of nature and cause of accusation. *United States v. D. Bradford* (D.C. App. 1975, 344 A. 2d 208).

— Sufficiency

Indictment which alleged that the accused "feloniously, wantonly and with gross negligence" shot the deceased charged involuntary manslaughter only and was not sufficient, as claimed by government, to also charge voluntary manslaughter. *United States v. C. L. Pender* (D.C. App. 1973, 309 A. 2d 492).

Instructions

Instruction, in prosecution for manslaughter, to the effect that if the Government proved beyond a reasonable doubt that the defendant did not act in self-defense he must be found guilty denied the defendant his right to a jury trial and was error. *W. A. Baker v. United States* (D.C. App. 1974, 324 A. 2d 194).

Neither fact that other instructions in prosecution for manslaughter properly stated that the Government bore the burden of proof beyond reasonable doubt on all elements of the offense nor the weakness of the self-defense claim made harmless erroneous instruction which called for a guilty verdict if the Government proved beyond a reasonable doubt that the defendant did not act in self-defense. *Id.*

Giving of instruction, which was made in response to jury request for explanation of manslaughter charge and in which jury was admonished that "they must recall all of the other instructions the court has given * * *, instructions with respect to reasonable doubt and self-defense * * * you can assume that I have repeated all those matters to you at this time and I will simply at this time discuss the elements of manslaughter," was not plain error. *United States v. W. Jones* (1973, 482 F. 2d 747, 157 U.S. App. D.C. 158).

Giving of instruction on flight and concealment in murder prosecution was not plain error. *Id.*

Evidence indicating that defendant's beating of his child was not in a passion of hate and rage but with an intent to discipline that was carried to such unreasonable extremes as to involve a "gross deviation" and extreme risk of harm and death warranted instruction on manslaughter, where jury could have found that defendant indicted for murder lacked the kind of awareness of risk involved in the malice requirement of murder. *United States v. M. L. Grady* (1973, 481 F. 2d 1106, 157 U.S. App. D.C. 6).

Instructions providing, inter alia, that high degree of recklessness requisite to prove malice as an element of murder is distinguished from lesser recklessness constituting manslaughter by reason of quality of defendant's awareness of risk either actually or from showing of such danger that any reasonable person must have been aware of it were not prejudicially erroneous. *United States v. P. Dent* (1973, 477 F. 2d 447, 155 U.S. App. D.C. 278).

Instruction concerning distinction between manslaughter and second-degree murder and factors that will reduce offense of murder to manslaughter are appropriate

only when defendant is charged with second-degree murder as well as manslaughter. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Where there was evidence of provocation, instruction repeating that provocation must be adequate before defendant could be acquitted of second-degree murder and convicted instead of manslaughter and manslaughter instruction containing detailed statement of several issues which were clearly important for jury to consider when deciding whether to convict defendant of second-degree murder were confusing, but did not require reversal of conviction, where confusion might have prejudiced government as well as defendant. *Id.*

If defendant charged with second-degree murder is entitled to charge on lesser included offense of manslaughter, instructions must take a form which distinguish clearly between those factors which constitute defenses to second-degree murder and those which constitute the elements of manslaughter, and which clearly instruct jury that when defense to second-degree murder—adequate provocation, for example—is put in issue, government must prove its absence beyond a reasonable doubt. *Id.*

Court of Appeals stated sample instruction on provocation is to be given in cases in which accused is charged with second-degree murder and manslaughter and adequate provocation is put in issue. *Id.*

Where defendant is charged with second-degree murder and manslaughter, once some evidence of provocation is in the case, whether introduced by government or defense, defendant is entitled to instruction on provocation and manslaughter, burden of persuading jury of absence of provocation is on government, and jury is entitled to clear instruction to that effect. *Id.*

Jury question

Evidence generated jury question whether conduct of homicide defendant, who engaged in exchange of verbal aspersions on discovering victim attempting to remove windshield wipers from defendant's inoperative automobile while it was parked in alley behind defendant's house, who reentered house and immediately appeared with pistol, which he loaded in yard, and who walked to rear gate and, while displaying pistol, dared victim to come in and threatened to kill victim if he did, despite fact that victim had made preparations to depart, and who assertedly intended only to scare victim when he discharged weapon as victim came at him with lug wrench, was such an invitation to provocation of encounter as to overcome claim of self-defense. *United States v. B. L. Peterson* (1973, 483 F. 2d 1222, 157 U.S. App. D.C. 219; cert. denied 94 S.Ct. 367, 414 U.S. 1007).

Malice

If malice is proved beyond reasonable doubt and no affirmative defense applies, defendant who kills a human being is guilty of murder; if malice is not proved, he is guilty of manslaughter. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Prejudicial error

Whether improper conduct of government counsel amounts to prejudicial error depends, in good part, on relative strength of government's evidence of guilt. *United States v. W. Jones* (1973, 482 F. 2d 747, 157 U.S. App. D.C. 158).

Cumulative effect of alleged errors in regard of failure to strike testimony of 12-year-old girl, whose testimony as to whether victim had gun was inconsistent, and with regard to prosecutor's comments as to girl's testimony, and of prosecutor's improper conduct, in calling accused an "executioner" and in expressing disbelief of accused's testimony, did not warrant reversal of manslaughter conviction. *Id.*

Provocation

When defendant is charged with second-degree murder and manslaughter and defendant, or government, has introduced evidence of provocation, government must prove absence or inadequacy of provocation beyond a reasonable doubt and it should be explained to jury

that provocation is not element of manslaughter, whether voluntary or involuntary, but a defense to second-degree murder. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

The government is not required to disprove provocation in its case in chief, unless its own evidence would support a finding of adequate provocation and, if defense introduces some evidence of provocation, government will have an opportunity to rebut. *Id.*

Self-defense

Where homicide defendant could not be found without fault in bringing conflict on, in that following prior verbal exchange he had obtained pistol from his house and, while displaying weapon by back fence, dared victim to come in and threatened to kill victim if he did, defendant, who asserted that fatal shooting was in self-defense but who did not retreat when victim came at him with lug wrench, was not so blameless that he was entitled to fall back on the "castle" doctrine of no retreat before resorting to use of deadly force in repelling attack on one in his home. *United States v. B. L. Peterson* (1973, 483 F. 2d 1222, 157 U.S. App. D.C. 219; cert. denied 94 S. Ct. 367, 414 U.S. 1007).

Witnesses—Sequestration

Presence of prosecution witnesses in courtroom during voir dire and brief period of pretrial argument was not shown to constitute reversible error. *United States v. G. Alexander and B. Murdock* (1972, 471 F. 2d 923, 152 U.S. App. D.C. 371; cert. denied 93 S. Ct. 541, 409 U.S. 1044).

Chapter 25.—PERJURY

§ 22-2501. Perjury—Subornation of perjury.

NOTES TO DECISIONS

Attorneys

Counsel are not exempt from prosecution under statutes denouncing crimes of obstruction of justice and subornation of perjury. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A. 2d 802).

Chapter 26.—PRISON BREACH—MISPRISONS

§ 22-2601. Prison breach.

NOTES TO DECISIONS

Abuse of discretion

Trial court did not abuse its discretion in failing to request presentence report, in prosecution for possession of narcotics paraphernalia and possession of dangerous drug, where information developed concerning defendant was sufficient so that judge could impose appropriate sentence without use of such report. *C. E. Rosser v. United States* (D.C. App. 1974, 313 A. 2d 876).

Committed

Where defendant was released from pretrial custody on personal recognizance and on condition that he live in half-way house and participate in work release program, he was not "committed" within purview of this section. *C. E. McMillian v. United States* (D.C. App. 1974, 326 A. 2d 241).

Constitutionality

Prosecution, under this section, of prisoner who escaped from custody in District of Columbia in Superior Court rather than in District Court did not deny prisoner due process or equal protection. *L. A. Rivers v. United States* (D.C. App. 1975, 334 A. 2d 179).

Construction

This section does not apply outside District of Columbia. *L. A. Rivers v. United States* (D.C. App. 1975, 334 A. 2d 179).

Penal institution

Defendants, who, in course of serving sentences for felonies, were transferred to a half-way house, were guilty of escape from penal institution when they left the half-way house and did not return. *United States v. M. Venable* (D.C. App. 1974, 316 A. 2d 857).

Prosecution

Misdemeanant who was placed in halfway house for participation in work release program due to administrative error rather than by court order required for valid placement, and who left and failed to return to halfway house, was properly prosecuted under this section which prescribes punishment for escape from penal institution rather than § 24-465 which prescribes punishment for violation of work release plan. *J. E. Armstead v. United States* (D.C. App. 1973, 310 A. 2d 255).

§ 22-2603. Introducing contraband into penal institution.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 27.—PROSTITUTION—PANDERING

§ 22-2701. Prostitution—Inviting for purposes of, prohibited.

NOTES TO DECISIONS

Assistance of counsel

Court-appointed counsel's failure to raise at trial issue of constitutionality of presumptively valid statute governing solicitation of prostitution did not amount to a violation of defendant's Sixth Amendment right to effective representation, where issue in decision of Superior Court judge allegedly holding statute unconstitutional was a purely legal one and not binding precedent and such case was on appeal. *W. J. Angarano v. United States* (D.C. App. 1973, 312 A. 2d 295; reconsideration denied 329 A. 2d 453).

Constitutionality

Proscription by this section of solicitation for the purpose of prostitution does not constitute an unconstitutional invasion of the right of privacy of defendants who were arrested upon allegedly making solicitations of police officers for prostitution, with the solicitations presumably having been made in some public place. *United States v. D. Moses et al.* (D.C. App. 1975, 339 A. 2d 46; cert. denied 96 S. Ct. 2624, — U.S. —).

This section, prescribing solicitation for prostitution, deals not with speech protected by the First Amendment but with a straightforward business proposal which may be regulated under the standards applicable to "purely commercial advertising." *Id.*

Females are not denied equal protection of the law by this section which prohibits the solicitation for prostitution where the statute is sex-neutral on its face and the practice of the solicitation by one male of another male for purposes of sodomy is violative of the provision. *Id.*

Constitutionality of solicitation statute was to be upheld against assertion that it violated defendant's right of privacy, not only in situation where solicitation was for homosexual sodomy, but also in situation where solicitations were by a man of a woman. *United States v. G. Dumas* (D.C. App. 1974, 327 A.2d 826).

Statute which proscribes solicitation for the purpose of committing sodomy, defined as taking into one's mouth or anus the sexual organ of any other person, does not violate constitutional guarantee of equal protection on its face by prohibiting acts between either two men or a man and a woman but not between two women. *United States v. M. Cozart* (D.C. App. 1974, 321 A. 2d 342).

Statute in effect prohibiting solicitation for sodomy, as applied to persons accused of public solicitations of strangers for sodomy, did not impinge upon personal rights that could be deemed fundamental or implicit in concept of ordered liberty. *United States v. L. Carson* (D.C. App. 1974, 319 A. 2d 329).

Fact that any of persons accused of public solicitations of strangers for sodomy ultimately may have contemplated a private and consensual act was no legal significance on overbreadth right of privacy issue as concerned soliciting statute. *Id.*

This section in effect prohibiting solicitation for offense of sodomy is within domain of state power and statute proscribing such conduct does not offend the First Amendment protection of freedom of expression. *J. O. Riley v. United States* (D.C. App. 1972, 298 A. 2d 228; cert. denied 94 S. Ct. 96, 414 U.S. 840).

Section proscribing solicitation for lewd and immoral purposes, limited to solicitations for sodomy, is not void for vagueness. *Id.*

Construction

This section proscribing solicitation for lewd and immoral purposes, construed as proscribing solicitations for sodomy, is sufficiently certain to inform public of conduct proscribed and is not void for vagueness amounting to a deprivation of due process of law. *J. O. Riley v. United States* (D.C. App. 1972, 298 A. 2d 228; cert. denied 94 S. Ct. 96, 414 U.S. 840).

Discriminatory enforcement

Evidence, including testimony that police department made no effort to seek out and arrest males who solicit females to engage in sexual acts with them for a price and that reason for such failure of effort was that use of women undercover officers to arrest male solicitors of prostitutes had proven infeasible, does not establish as a matter of law a conscious policy of discrimination based on sex in enforcement of statutes proscribing solicitation for prostitution. *United States v. A. C. Wilson* (D.C. App. 1975, 342 A. 2d 27).

In absence of any showing that government's policy in requiring corroboration in prosecutions involving homosexual conduct, while not requiring such corroboration in prosecutions for solicitation for prostitution, is based on distinction between sex of defendants, such policy does not result in unconstitutional sex discrimination in violation of right to due process. *J. Garrett v. United States* (D.C. App. 1975, 339 A. 2d 372).

Evidence does not support trial court's finding on motion to dismiss indictment that there was discriminatory enforcement of this section. *United States v. D. Moses et al.* (D.C. App. 1975, 339 A. 2d 46; cert. denied 96 S. Ct. 2624, — U.S. —).

Evidence which showed that while some women solicited each other for sodomitic acts, only men were arrested for homosexual solicitation under statute which made solicitation for sodomitic acts a crime, where there was no indication as to whether lesbian solicitation was known to the police, showed no more than a failure to prosecute others because of a lack of knowledge and did not show discriminatory enforcement. *United States v. M. Cozart* (D.C. App. 1974, 321 A. 2d 342).

Dismissal of information

Dismissal of information, which charged solicitation for prostitution, merely on basis of determination that accused was prejudiced by fact that two police officers, who were government witnesses, heard accused say, on being asked by trial court to state her account of the facts after she indicated desire to enter guilty plea, that she did not solicit officer but that he solicited her and she refused was error. *United States v. D. J. Lester* (D.C. App. 1974, 318 A. 2d 899).

Elements of offense

Proof of specific offer to perform sex act is not element of offense of solicitation for prostitution. *United States v. M. Smith* (D.C. App. 1975, 330 A. 2d 759).

Entrapment

Where defendant who was convicted of soliciting for prostitution confirmed his encounter with morals officer, where defendant by his own testimony was conversant with jargon of solicitation bargaining process, and where defendant did not claim to be an unwary innocent with no intent to engage in the solicitation process, no basis existed on which to premise a defense of "entrapment" since defendant did not maintain that morals officer implanted the criminal design in his mind to solicit her for prostitution, and since officer's role was limited to her presence and to an exploration of defendant's purposes. *J. D. Williams v. United States* (D.C. App. 1975, 342 A. 2d 367).

Evidence—Sufficiency

Evidence supported conviction for soliciting for prostitution despite defendant's contention that it established only a single solicitation without further proof from surrounding circumstances that defendant was indiscriminate. *J. Garrett v. United States* (D.C. App. 1975, 339 A. 2d 372).

Indictment and information

Since offense of soliciting for lewd and immoral purposes has been limited by judicial construction to solicitation for acts of sodomy, defendants charged by information in statutory language with soliciting for lewd and immoral purposes are on clear notice that they are charged with solicitation for sodomy. *United States v. F. H. Miqueli* (D.C. App. 1975, 349 A. 2d 472).

Since this section proscribes two types of sexual solicitation in the disjunctive, i.e., solicitation for prostitution or solicitation for an immoral and lewd purpose, information or indictment can charge both of the prohibited acts in the conjunctive and under such charge government can proceed to prove any one or more of the acts, and cannot properly be required to elect between the conjunctively charge solicitations. *Id.*

Prejudice to defendant

That two police officers, who were government witnesses, heard accused say, on being asked by trial court to state her account of the facts after she indicated desire to enter guilty plea, that she did not solicit officer but that he solicited her and she refused did not prejudice accused, in that accused heard officers' version of the occurrence and in that the defense commonly used in such a prosecution was that solicitation was by the officer and not by defendant. *United States v. D. J. Lester* (D.C. App. 1974, 318 A. 2d 899).

Sentence

Although a sentence of imprisonment cannot be for a greater period than six months where there is no right to a jury trial, and although the minor defendant, who pled guilty to two charges of soliciting for the purpose of prostitution, had no right to a jury trial, committing her under the Federal Youth Corrections Act to the custody of the Attorney General for an indefinite period up to six years did not exceed permissible sentence, since she was not "imprisoned" at all; rather, in the terms of the Act, she had "in lieu of the penalty of imprisonment" been sentenced "for treatment and supervision." *G. E. Austin v. United States* (D.C. App. 1973, 299 A. 2d 545).

Solicitation

Question "You want to go out for a while?" when asked of police officer in civilian clothes by defendant attired as a woman was not a "solicitation." *F. L. Shannon v. United States* (D.C. App. 1973, 311 A. 2d 501).

Affirmative response by defendant to inquiry made by police officer as to whether defendant would submit to rectal sodomy did not constitute a "solicitation" by the defendant. *Id.*

Trial by jury

Defendant charged with soliciting for the purpose of prostitution, which is a petty offense for which the maximum penalty prescribed is a fine of \$250 or imprisonment for 90 days or both, is not entitled to a jury trial, since the Sixth Amendment does not require that a person charged with a petty offense be afforded, at his request, a jury trial, and since Congress has defined a "petty offense" in this context as any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or fine of not more than \$500 or both. *C. F. Marshall v. United States* (D.C. App. 1973, 302 A. 2d 746).

Defendant had neither a statutory nor a constitutional right to a jury trial on charge of soliciting for the purpose of prostitution, the penalty for which offense was a fine of \$250 and/or 90 days' imprisonment. *G. E. Austin v. United States* (D.C. App. 1973, 299 A. 2d 545).

§ 22-2703. Suspension of sentence of guilty person—Conditions—Enforcement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-2705. Pandering—Inducing or compelling female to become prostitute or engage in prostitution—Penalty.

NOTES TO DECISIONS

Corroboration

Trial court was not required to instruct jury on corroboration, in prosecution for inducing a female to engage in prostitution and for compelling a female to reside with defendant for purpose of prostitution, where none of the offenses for which defendant was convicted involved sexual activity between defendant and complainant. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

Lesser included offense

Since evidence showed that offenses arose out of separate acts no need existed to consider whether offense of inducing a female to engage in prostitution was a lesser included offense of compelling female to reside with defendant for purposes of prostitution. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

§ 22-2706. Compelling female to live life of prostitution against her will—Penalty.

NOTES TO DECISIONS

Corroboration

Trial court was not required to instruct jury on corroboration, in prosecution for inducing a female to engage in prostitution and for compelling a female to reside with defendant for purpose of prostitution, where none of the offenses for which defendant was convicted involved sexual activity between defendant and complainant. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

Lesser included offense

Since evidence showed that offenses arose out of separate acts no need existed to consider whether offense of inducing a female to engage in prostitution was a lesser included offense of compelling female to reside with defendant for purposes of prostitution. *B. F. Villines v. United States* (D.C. App. 1974, 320 A. 2d 313).

§ 22-2722. Keeping bawdy or disorderly houses.

NOTES TO DECISIONS

Appeal and error

Where, on reviewing of defendant's conviction of keeping a bawdy or disorderly house, authoritative construction of disorderly house statute was rendered and earlier decision which construed the statute and which had been followed by trial court was rejected, conviction would be reversed. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Common law

Common-law crime of "keeping a disorderly house" was the maintenance of premises upon which activity occurred that either created a public disturbance or, though concealed from the public, constituted a nuisance per se, such as a gambling house or bawdy house. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Constitutionality

Defendant who was charged with keeping a bawdy or disorderly house, specifically a commercial establishment restored to for homosexual activities, had no standing to challenge constitutionality of statutory proscription against sodomy on theory that statute was overbroad in that it could be applied to conduct within private abode between those in a familial relationship as defendant was not himself within the class whose alleged right of privacy was affected by application of the statute. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Elements of offense

To establish offense of keeping a bawdy or disorderly house, Government must prove that acts take place on the premises in question that disturb the public or constitute a nuisance per se in the nature of a gambling house or bawdy house, that the premises are regularly resorted to for the commission of such acts and that the proprietor knows or should know of the acts and does nothing to prevent them; Government is not required to prove a subversion of public morals. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Nuisance per se

"Homosexual health club" where acts of sodomy took place was similar to a bawdy house and constituted a nuisance per se. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Privacy rights

Acts of sodomy which allegedly occurred at "homosexual health club" were not protected by any recognized right to privacy as the acts occurred not in a private abode but on premises of a commercial establishment open to the public. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Chapter 28.—RAPE

§ 22-2801. Definition and penalty.

NOTES TO DECISIONS

Acquittal

Accused's interest in an acquittal when prosecution has failed to present sufficient evidence to go to jury is one for trial judge to vindicate in first instance, but if trial judge fails in this assignment, appellate court will exercise its discretionary authority to provide that protection even if the defendant may have moved in the alternative for a new trial. *United States v. D. A. Wiley* (1975, 517 F. 2d 1212, 170 U.S. App. D.C. 382).

Assistance of counsel

Denial of accused's right to call at preliminary hearing a witness whose testimony is material to issue of probable cause to hold accused for further prosecution infringes guarantee of effective assistance of counsel at every critical stage of a criminal proceeding. *United States v. T. F. King* (1973, 482 F. 2d 768, 157 U.S. App. D.C. 179).

Confessions

Totality of circumstances surrounding arrest of 18-year-old defendant, who was advised of his right to remain silent and to counsel prior to police interrogation which first focused on robbery and then shifted to rape resulting in confession by defendant who was a narcotic addict but showed no signs of withdrawal, was not such as to require finding that the confession was involuntary. *United States v. H. T. Poole* (1974, 495 F. 2d 115, 161 U.S. App. D.C. 289; cert. denied 95 S. Ct. 2667, 422 U.S. 1048).

Constitutionality

Protection from illicit sexual intercourse of underage females, in contradistinction to male children, provided by this section prohibiting carnal knowledge and abuse of female child was a reasonable classification and did not deny due process to males under age of 16 in view of fact that only members of female sex are susceptible to pregnancy. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A. 2d 286).

Construction

This section prohibiting carnal knowledge or abuse of a female child under 16 years of age was not specifically limited to male offenders and did not deny due process to male youths who were convicted under the statute, despite contention that statute invidiously discriminated against male youths who were under 16 years of age and who engaged in consensual sexual intercourse with females under the age of 16 years by making the male participant alone criminally answerable. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A. 2d 286).

Discovery

With the exception of records of impeachable convictions, the criminal records and records of arrests of government witnesses were not discoverable and the suppression of the testimony of government witnesses, as

sanction for disobedience of pretrial discovery order, was in excess of trial court's authority. *United States v. W. C. Engram et ano.* (D.C. App. 1975, 337 A. 2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1958).

Elements of offense

Specific intent is not an element of rape even though it is an element of lesser included offense of assault with intent to commit rape. *United States v. P. G. Thornton* (1974, 498 F.2d 749, 162 U.S. App. D.C. 207).

Elements of offense of carnal knowledge are penetration with a child under the age of 16. *United States v. D. A. Wiley* (1974, 492 F. 2d 547, 160 U.S. App. D.C. 281).

Where offense involves a female child under 16 years of age, only remaining element of corpus delicti is penetration, for when a child under the age of consent is involved the law conclusively presumes force and the question of consent is immaterial. *United States v. C. E. Jones* (1973, 477 F. 2d 1213, 155 U.S. App. D.C. 328).

Evidence—Admissibility

Trial court, in rape prosecution, properly excluded as hearsay testimony of woman living with defendant concerning beating which victim had allegedly sustained at hands of former boyfriend after he caught her in flagrante delicto with another man, despite defendant's contention on appeal that such testimony was relevant to defense of consent and to amount of violence a rapist would have to exert before victim would submit. *C. Edmondson, Jr. v. United States* (D.C. App. 1975, 346 A. 2d 515).

Where government offered into evidence two laboratory reports concerning presence of sperm in vagina of victim of sexual assault and indicated to the trial court that physician would testify concerning the testing procedures followed with respect to the specimen taken, prosecution should not have failed to develop by examination of the physician his explanation of the relative routineness of the test and its degree of medical reliability. *T. J. Smith v. United States* (D.C. App. 1975, 337 A. 2d 219).

In prosecution for carnal knowledge of female child under 16 years of age, admission of defendant's photograph identified by victim was not error, where photograph was a polaroid snapshot showing a natural frontal pose of defendant and there was absolutely nothing in picture to indicate a prior criminal record or association with police. *United States v. C. E. Jones* (1973, 477 F. 2d 1213, 155 U.S. App. D.C. 328).

—Circumstantial

In prosecution for attempted carnal knowledge of female child under 16 years of age, determination that charged offense had actually been committed was supported by numerous circumstantial details in addition to complainant's testimony, including cuts on complainant's foot and hand, disheveled appearance, prompt report to police, complainant's ability to point out light string in room where incident allegedly took place and discovery in that room of girdle which complainant had left behind after incident. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A. 2d 286).

—Corroboration

Sex offense involving children may not be established by the testimony of the victim alone. *United States v. D. A. Wiley* (1974, 492 F. 2d 547, 160 U.S. App. D.C. 281).

Corroboration of a 12-year-old complainant's testimony, consisting of testimony of two officers that complainant was crying and upset, her clothing was disheveled, she had no coat even though it was a cold day, and the complainant's prompt report of the alleged incident, did not corroborate sexual intercourse and was insufficient to submit charge of carnal knowledge or of aiding and abetting co-defendant's act of carnal knowledge. *Id.*

In prosecution for sex crime, corroboration of victim's testimony by independent evidence is a prerequisite to conviction; the corroboration need not be by direct evidence but may consist of circumstances tending to support victim's testimony. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A. 2d 286).

In prosecution for carnal knowledge of defendant's ten-year-old daughter, testimony of victim's eight-year-old brother was sufficient to meet corroboration requirement with respect to proof of sex offenses though his responses to questions were badly garbled and generally

difficult to understand, where such deficiencies were attributable to inferior language skills and emotional turmoil rather than to any fundamental inability to observe with accuracy. *United States v. W. E. Ashe* (1973, 478 F. 2d 661, 155 U.S. App. D.C. 457).

In prosecution for carnal knowledge of a female child under 16 years of age, absence of any evidence tending to show a motive for fabrication coupled with maturity that victim demonstrated throughout proceedings lent inherent credence to her testimony, and while not in and of themselves corroborative, they diminished danger of falsification that was foundation of corroboration requirement. *United States v. C. E. Jones* (1973, 477 F. 2d 1213, 155 U.S. App. D.C. 328).

Medical testimony that victim's condition was consistent with penetration, her emotional state when she first revealed what had happened, when she first discussed case with police, and when she first identified defendant's picture, taken in conjunction with her accurate description of scene of events, and description of automobile linked to defendant, supplied more than ample corroboration of corpus delicti. *Id.*

Independent corroborative evidence need not establish each and every material element of offense of rape, but is sufficient when it permits jury to conclude beyond reasonable doubt that victim's account of crime was not fabrication; rule is flexible, and particular quantum of proof required will necessarily vary from case to case depending upon, e.g., age and impressionability of prosecutrix and presence or absence of any apparent motive to falsify or exaggerate. *United States v. G. Gray, Jr.* (1973, 477 F. 2d 444, 155 U.S. App. D.C. 275).

Evidence including testimony concerning appearance and condition of victim was sufficient to fulfill requirement of corroboration in rape prosecution, when it dovetailed perfectly with victim's account of events. *Id.*

In rape prosecution, corroboration is required for identification of assailant as well as for commission of offense, but lesser standard of proof is required, and where there is convincing identification, which minimizes danger of mistake or falsification, no further corroboration is required. *Id.*

Sex charges may not be submitted to jury simply upon testimony of alleged victim; corroboration is essential to proof of each element. *United States v. C. L. Tremble* (1972, 470 F. 2d 1272, 152 U.S. App. D.C. 363).

—Examination of witnesses

Defendant is not entitled to cross-examine prosecution witnesses about \$10 witness fee received from the prosecutor, particularly since stipulation had been entered pretrial that each government witness was paid a \$10 witness fee pursuant to statute. *H. F. Wilburn, Jr. v. United States* (D.C. App. 1975, 340 A. 2d 810).

—Identification

In prosecution for attempted carnal knowledge of female child under 16 years of age, complainant's identification of defendants was amply corroborated by testimony establishing that she had an adequate opportunity to observe her assailants. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A. 2d 286).

—Medical

Medical evidence of sexual intercourse was not required to sustain conviction of attempted carnal knowledge of female child under 16 years of age. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A. 2d 286).

—Sufficiency

Evidence, in rape prosecution, constituted more than ample corroboration of complainant's testimony concerning the offense, and was sufficient to permit case to go to jury. *C. Edmondson, Jr. v. United States* (D.C. App. 1975, 346 A. 2d 515).

Evidence, including the testimony of an eyewitness involving all three defendants in the assault upon victim, was sufficient to support verdict of jury finding defendants guilty of felony-murder and assault with intent to commit rape while armed. *United States v. B. J. Heinlein* (1973, 490 F. 2d 725, 160 U.S. App. D.C. 157).

Evidence in prosecution for assault with intent to commit rape was insufficient to establish that defendant intended to achieve sexual intercourse by force and violence and against will of prosecutrix. *United States v. C. L.*

Tremble (1972, 470 F. 2d 1272, 152 U.S. App. D.C. 363).

Evidence, including evidence that defendant's fingerprints were found on both sides of pane of glass removed from back door to apartment and that prints were found on surface of glass covered by molding strips which secured window in door, were sufficient to sustain determination that defendant was person who entered complainant's apartment. *United States v. J. E. Cary* (1972, 470 F. 2d 469, 152 U.S. App. D.C. 321).

— Weight

Generally, sexual assault charges by mentally abnormal girl should be subjected to great scrutiny. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

Female offenders

Female may be charged as a principal under this section prohibiting carnal knowledge or abuse of a female child under 16 years of age if she has aided or abetted commission of the particular crime even though female is physically incapable of committing the prohibited act. *In the Matter of W.E.P.* (D.C. App. 1974, 318 A. 2d 286).

Identification

Because there is some degree of suggestiveness when police officer indicates to witness that suspect's picture is among photographs in array, impeachment of witness on this point is relevant factor to be considered by jury in judging weight to be given photographic identification, particularly where there is only one eyewitness. *M. A. Hampton v. United States* (D.C. App. 1974, 318 A. 2d 598).

In prosecution for carnal knowledge of a female child under 16 years of age, prosecutor's use of book of photographs from which victim originally selected defendant's picture was not prejudicial error, absent a showing of some independent specific prejudice resulting from use of album warranting reversal, some prejudice substantiated by more than bare allegation that its use alone subjected jury to an impermissible inference of a prior criminal record. *United States v. C. E. Jones* (1973, 477 F. 2d 1213, 155 U.S. App. D.C. 328).

Although there was no prejudice in case from prosecutor's use at trial of book of photographs from which victim originally selected defendant's picture, caution should be taken in future to determine if such action is absolutely necessary, as use of such an album is a risky prosecutorial venture, and one as to which great care should be exercised, especially where it is merely cumulative of other identification evidence. *Id.*

— In-court

Government established, in prosecution for rape while armed and armed robbery, by clear and convincing evidence that the in-court identifications of defendant by the victims were based on observation of suspect rather than on drawing of man submitted to victims for identification, and identification procedure was not improper. *United States v. R. E. Adams, Jr.* (1973, 481 F. 2d 1099, 156 U.S. App. D.C. 415).

Impartial jury

Failure to excuse juror in rape case after juror stated that she knew prosecution witness constitutes an abuse of discretion, since juror had been a personal friend of mother of the witness for 30 years and had known witness while he was growing up, since credibility of witness was crucial to Government's case, and since, if juror, in assessing credibility of the witness, were to rely upon facts which she had learned through her prior relationship with witness or his mother, then defendant would be denied a fair trial. *H. F. Wilburn, Jr. v. United States* (D.C. App. 1975, 340 A. 2d 810).

Impeachment

Test of whether witness' statements concern collateral matters, so as not to be subject to impeachment, is whether fact as to which statement is predicated could have been independently shown in evidence for any purpose. *M. A. Hampton v. United States* (D.C. App. 1974, 318 A. 2d 598).

Trial court erred when it precluded defendant's counsel from attempting to impeach complaining witness' testimony that she had been told that suspect had been arrested after she viewed police photographs by bringing out witness' grand jury testimony that she had viewed photographs only after being informed of suspect's arrest. *Id.*

Indictment

Grand jury indictment charging forcible rape, carnal knowledge and indecent liberties was not subject to dismissal on ground that it was based on transcript of sworn testimony before earlier grand jury which returned indictment for carnal knowledge that had been dismissed because of defendant's age, where testimony before first grand jury was not limited to carnal knowledge charge, there was no limitation of issues or offenses in presentation of evidence to first grand jury, and statement of victim, read to first grand jury in her presence and affirmed by her orally under oath, recited details of two acts of forcible rape. *United States v. S. C. Wagoner* (D.C. App. 1974, 313 A. 2d 719; rehearing denied 321 A. 2d 211; cert. denied 95 S.Ct. 630, 419 U.S. 1052).

Counts of indictment charging defendant with assaulting female persons with intent to carnally know and abuse such persons did not charge offenses under District of Columbia law where victims were females over 16 years of age. *United States v. J. Hutchinson* (1973, 478 F. 2d 997, 156 U.S. App. D.C. 87).

Instructions

Instruction with respect to identification in prosecution for burglary, rape, and robbery was sufficient for circumstances of case wherein complaining witness did not identify defendant but identity was established from fingerprint evidence. *United States v. J. E. Cary* (1972, 470 F. 2d 469, 152 U.S. App. D.C. 321).

Jencks Act

No foundation was laid for a Jencks Act hearing in rape prosecution where officer on cross-examination stated that, after being informed of rape, he took complainant's name and date of birth and then transported her to office of the sex squad, and where it does not appear from the record that defense counsel ever established that officer recorded a statement. *H. F. Wilburn, Jr. v. United States* (D.C. App. 1975, 340 A. 2d 810).

Joinder

Review of record showed that the similarity of circumstances surrounding the two criminal episodes on which charges of rape while armed and armed robbery were based were sufficiently remarkable to prove that there was a reasonable probability that the same person committed the crimes and there was no prejudice in the joinder of both crimes in one trial. *United States v. R. E. Adams, Jr.* (1973, 481 F. 2d 1099, 156 U.S. App. D.C. 415).

Lesser included offense

Where armed assault was essential part of proof establishing armed rape, armed assault was lesser offense included within the armed rape, and assault conviction was vacated. *United States v. E. Edmonds, Jr.*, (1975, 524 F. 2d 62, 173 U.S. App. D.C. 241).

Preliminary hearing

At preliminary hearing to determine whether probable cause existed to hold accused for prosecution on charge of rape, accused was entitled to examine complainant as his own witness absent presentation of any reason why, if called, complainant should not have been allowed to testify; however, accused was not entitled to have preliminary hearing reopened for failure to permit him to call complainant where indictment had been returned against him subsequent to the preliminary hearing, though trial judge could fashion appropriate remedy to suitably avert injury from the wrong suffered. *United States v. T. F. King* (1973, 482 F. 2d 768, 157 U.S. App. D.C. 179).

Retrial

Where corroboration rule upon which defendant's first conviction of carnal knowledge was reversed was established law, and insufficiency of prosecution's case was attributable to inadequate preparation and presentation of the evidence against defendant, and not to any manifest necessity, it was not just and appropriate to subject defendant to a second trial, and resulting conviction would be set aside. *United States v. D. A. Wiley* (1975, 517 F. 2d 1212, 170 U.S. App. D.C. 382).

Search and seizure

Seizure of work pants in defendant's apartment following his arrest in connection with rape and murder, and following inspection of pants which disclosed "what we

thought to be blood" was permissible under plain view rule where pants were lying on clothes hamper at time of inspection and seizure. *United States v. W. Sheard* (1972, 473 F. 2d 139, 154 U.S. App. D.C. 9; cert. denied 93 S. Ct. 2784, 412 U.S. 943).

Severance

In prosecution of defendants on murder and rape charges, trial court did not abuse its discretion in denying motion of defendant brothers for a severance from codefendant, who had fatally stabbed the victim, notwithstanding defendants' claim that the evidence against the codefendant was much stronger than the evidence against them. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Speedy trial

Fifteen-month delay between arrest and trial was such as to constitute a denial of defendant's right to a speedy trial where delay was not, at all times, attributable to defendant, who suffered personal prejudice by reason of fact that he was confined throughout period, though he continually pressed his motion for release pending trial, and where personal prejudice resulting from pretrial incarceration was exacerbated by fact that defendant was a youth being confined in an adult jail and fact that defendant was especially handicapped by his social and educational background. *United States v. W. H. Calloway* (1974, 505 F. 2d 311, 164 U.S. App. D.C. 204).

Witnesses

Where testimony of complainant's seven-year-old daughter demonstrated her ability to recollect events preceding and following her mother's rape, child was competent to testify as witness for government, in prosecution for rape. *E. Edmondson, Jr. v. United States* (D.C. App. 1975, 346 A. 2d 515).

Trial court, which denied a defense motion during trial to have key prosecution witness, who was a chronic alcoholic, subjected to a psychiatric examination with respect to his competency, did not abuse its discretion in refusing to treat the witness as a person of actual or potential incompetency, notwithstanding the claims of defendants, in support of their motion, that the testimony given by the witness was highly confusing and that hospital records indicated he had a clinical history which rendered him wholly unreliable. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Chapter 29.—ROBBERY

§ 22-2901. Robbery.

NOTES TO DECISIONS

Abuse of discretion

Although police who three or four days after purse snatching found the purse should not have returned it to the complaining witness, trial court's ruling that sanctions against prosecution were unwarranted is substantially supported by record and does not constitute an abuse of discretion, even if court had authority to impose sanctions, where the wet and weathered condition of purse would in all likelihood have rendered its surfaces unsusceptible to fingerprint analysis, there was no indication that surfaces were composed of material which would take and retain prints and it was possible that a number of people had handled the abandoned purse in the interim. *T. Marshall v. United States* (D.C. App. 1975, 340 A. 2d 805).

Aider and abettor

An aider and abettor of an armed robbery is not guilty of a lesser included offense but is a principal to the robbery. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A. 2d 587).

Appeal and error

Where defendant did not, within five days of trial, request hearing on her motion to suppress lineup identification as unnecessarily suggestive and did not do so on day of trial when court was reviewing and disposing of various pretrial matters, defendant cannot properly raise issue of suggestivity on appeal, unless there was plain error in allowing lineup identification in evidence. *L. Irby v. United States* (D.C. App. 1975, 342 A. 2d 33).

Where defendant did not move for production of photographs displayed to witnesses prior to his arrest at any stage of prosecution or request that sanctions be imposed on Government for its loss of evidence, and where there was some evidence that police department had made earnest efforts to preserve the photographic arrays, failure to impose sanctions on Government for loss of evidence did not constitute error. *United States v. R. L. Scriber* (1974, 499 F.2d 1041, 163 U.S. App. D.C. 36).

Arrest

Totality of facts and circumstances, including information from radio report about fleeing pedestrian and pursuing citizen, and identification of pursuing citizen, justified warrantless arrest of pedestrian while he was being transported by officers to scene of reported incident, even though sum total of information available to officers when they placed pedestrian under arrest came from an unidentified victim of an undisclosed robbery and assault. *G. W. Bates v. United States* (D.C. App. 1974, 327 A. 2d 542).

Assistance of counsel

It is not denial of effective assistance of counsel for defendant's trial counsel to make a conscientious decision not to put on alibi testimony which, after investigation, he is convinced would be perjured. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

Even if pretrial identifications which resulted from one lineup and one two-man showup were improper, defendant was not denied effective assistance of counsel because of counsel's failure to move, pretrial, for suppression of the identifications where there was abundant evidence of sources independent of those pretrial identifications to support the in-court identifications. *S. S. Shelton v. United States* (D.C. App. 1974, 323 A.2d 717).

Where an attorney has represented a convicted defendant at trial and, as defendant's attorney on appeal, concludes in good faith that a legitimate issue exists as to the constitutional adequacy of his representation of the defendant at trial, it is the duty of the attorney to move to withdraw as counsel on appeal. *Id.*

Defense counsel should be guided by American Bar Association Standards, should, *inter alia*, confer with client without delay and as often as necessary to elicit matters of defense or ascertain potential defenses, discuss potential strategies and tactical choices with client, promptly advise him of his rights and take actions necessary to preserve them, conduct investigations to determine matters of defense that can be developed, interview government witnesses if accessible, attempt to secure information in possession of prosecution and do adequate research. *United States v. W. DeCoster, Jr.* (1973, 487 F. 2d 1197, 159 U.S. App. D.C. 326).

Claim of ineffective assistance of counsel should first be presented to district court in motion for a new trial and in such proceeding, evidence dehors the record may be submitted by affidavit, and when necessary district judge may order a hearing or otherwise allow counsel to respond; if trial court is willing to grant motion, the Court of Appeals will remand and if motion is denied, appeal therefrom will be considered with appeal from conviction and sentence. *Id.*

Competency hearing

Where pretrial examination had resulted in certification by hospital staff of competency and Superior Court judge after hearing had reached like result, district judge was not required to direct, *sua sponte*, further hearing on competency in prosecution for assault with intent to commit rape, and for robbery. *United States v. C. L. Tremble* (1972, 470 F. 2d 1272, 152 U.S. App. D.C. 363).

Conduct of prosecuting attorney

Prosecutor's reference to defendant's "background" was impermissible where there was no evidence in record which could have supplied content to the word. *United States v. A. A. Freeman* (1975, 514 F.2d 1314, 169 U.S. App. D.C. 73).

Confessions

Totality of circumstances surrounding arrest of 18-year-old defendant, who was advised of his right to remain silent and to counsel prior to police interrogation which first focused on robbery and then shifted to rape resulting

in confession by defendant who was a narcotic addict but showed no signs of withdrawal, was not such as to require finding that the confession was involuntary. *United States v. H. T. Poole* (1974, 495 F.2d 115, 161 U.S. App. D.C. 289; cert. denied 95 S. Ct. 2667, 422 U.S. 1048).

Police officer's embellishment of Miranda warning with statement that, if defendant could not afford an attorney one would be appointed in court the next day, was only one factor to be considered in determining whether defendant's subsequent confession was made after a knowing, intelligent, and voluntary waiver of his rights, and trial court erred in ruling that said embellishment necessarily rendered confession inadmissible. *United States v. J. Rawls* (D.C. App. 1974, 322 A.2d 903).

Notwithstanding defendant's contention that the trial court erred in failing to suppress his alleged confession where it was uncontested that he had made known his wish and intention to consult with an attorney, but where the Government had, nevertheless, continued to interrogate him in the absence of an attorney and eventually elicited the confession, the record showed, in support of conclusion that defendant waived his right to the presence of an attorney, that defendant simply indicated he was "undecided" about an attorney and then decided to go ahead and give a statement. *United States v. W. H. Howard* (1972, 470 F. 2d 406, 152 U.S. App. D.C. 258).

Construction

Although this section does not mention specific intent, it must be read as referring to the common law crime of robbery of which a necessary element is specific intent to take property of another. *United States v. W. N. Owens et ano.* (D.C. App. 1975, 332 A.2d 752).

While larceny remains an offense against possession, robbery is basically a crime against the person. *United States v. T. B. Dixon* (1972, 469 F. 2d 940, 152 U.S. App. D.C. 200).

Cross-examination

Defendant's silence when interrogated by police after arrest for robbery as to where he had obtained large sum in his possession was not inconsistent with his trial testimony that his wife had asked him to purchase money orders; thus, prosecutor's cross-examination concerning defendant's failure to give an explanation to police was not permissible under special rule permitting defendant to be impeached by prior inconsistent utterances made at time of arrest, especially where defendant had insisted upon his innocence at time of arrest and maintained his innocence throughout the proceedings. *United States v. F. Anderson* (1974, 498 F.2d 1038, 162 U.S. App. D.C. 305; aff'd 95 S. Ct. 2133, 422 U.S. 171).

Refusal, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to permit cross-examination of accomplice, who testified for government and whose counsel had been informed that government would be willing, with regard to unrelated narcotics and robbery charges against accomplice, to accept plea of guilty to one misdemeanor, as to whether government had made any disposition of such unrelated charges was reversible error when considered in conjunction with other errors. *United States v. I. E. Leonard* (1974, 494 F.2d 955, 161 U.S. App. D.C. 36).

Trial court misconceived test for evaluating whether defense counsel's proposed questioning of arresting officer, regarding his hitting defendant, was probative on issue of officer's alleged bias, where court ruled that the time of commission of the offense by defendant, rather than the time of officer's testimony against defendant, was crucial; and, while defendant's proffer of the bias evidence was incomplete, that could not justify a complete curtailment of questioning; however, since the implied relation between the officer's alleged bias and robbery victim's testimony, which was critical, was highly speculative, the error was harmless. *G. A. Best v. United States* (D.C. App. 1974, 328 A.2d 378).

— Exploratory

While a defendant may put exploratory questions to a government witness based on nothing more than "slight suspicion," defendant does not have the right to conduct such probes in the presence of jury; such exploratory cross-examination may be pursued either by nonaccusatory questions in the presence of the jury or by questioning

outside the presence of the jury, with the latter course permitting a less inhibited inquiry in the nature of a voir dire examination. *United States v. A. B. Knight* (1974, 509 F.2d 354, 166 U.S. App. D.C. 21).

Defense investigative reports

Where defendant's court-appointed counsel employed an investigator to interview potential witnesses, the investigator did so and sent to counsel a report consisting of summaries of interviews, and investigator, called as defense witness, did not use report to refresh his recollection, trial court erred in ordering investigator to turn over copy of report to the Government since the defense cannot be required to turn over to the prosecution prior statements of defense witnesses which could be used by the prosecution as evidence against the defendant. *United States v. A. F. Wright* (1973, 489 F.2d 1181, 160 U.S. App. D.C. 57).

Defenses

Defendant who interposed defense of intoxication to robbery charge, who gave urine sample the day after his arrest and who sought discovery of results of test was entitled to a hearing to determine if a test were made, and if so, if the test could have afforded any significant light on defendant's degree of intoxication at the time of the offense, and if so, for determination of sanction to be imposed upon Government for failing to produce the results. *United States v. J. L. Butler* (1974, 499 F.2d 1006, 163 U.S. App. D.C. 1).

Where defendant claimed that armed robbery victim owed him \$30 as result of defrauding him in marihuana sale, but defendant allegedly took over \$500 from offending drug dealer and dealer's companions, defendant did not establish claim of right defense, and thus trial court did not err in prohibiting defense counsel from arguing said defense to jury. *C. Smith v. United States* (D.C. App. 1974, 330 A.2d 519).

Discovery

Where matter which prosecution had not disclosed prior to trial of indictment is inadmissible hearsay, i.e., a street rumor which remained unverified despite immediate investigation by police detective, and where detective did not abandon investigation until after positive identification of defendant had been made by principal victim and defendant had confessed to the crime, undisclosed information is not kind of material which prosecution should have furnished defendant in advance of trial. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A. 2d 465; cert. denied 96 S. Ct. 1751, — U.S. —).

With the exception of records of impeachable convictions, the criminal records and records of arrests of government witnesses were not discoverable and the suppression of the testimony of government witnesses, as sanction for disobedience of pretrial discovery order, was in excess of trial court's authority. *United States v. W. C. Engram et ano.* (D.C. App. 1975, 337 A.2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

If urine test had been made upon defendant, who interposed defense of intoxication to robbery charge. Government's lack of knowledge as to bearing of the test upon defendant's condition at the time of the offense, if, in fact, the test might have shed light thereon, would not foreclose inquiry into the obligation of the Government to preserve the evidence or foreclose consideration of sanctions for failure to do so. *United States v. J. L. Butler* (1974, 499 F.2d 1006, 163 U.S. App. D.C. 1).

Double jeopardy

Double jeopardy clause prohibits successive prosecutions in the District for violations of federal and local law arising from the same bank or savings and loan robbery, but it does not require that prosecution under the federal scheme be preferred to prosecution under local statutes, so long as only a single prosecution takes place. *United States v. R. Shepard* (1975, 515 F.2d 1324, 169 U.S. App. D.C. 353).

Where accused was represented by same counsel both at trial, during which continuance was granted, and at second trial, where defense counsel raised issue of double jeopardy at both appearances, where judge at second trial considered the possibility of waiver of accused's defense of double jeopardy only at the insistence of defense

counsel and where, after a recess for consultation between accused and defense counsel, waiver was presented to trial court in accused's presence and she was given opportunity to disavow the waiver but did not do so, accused has intelligently waived such defense. *D. Mason v. United States* (D.C. App. 1975, 346 A. 2d 250).

Where trial court, acting on good faith but erroneous belief that defendant had been entitled to certain information long before trial, first suggested continuance, which was declined by defendant, and then unsuccessfully sought defendant's consent to mistrial, and finally declared mistrial and discharged jury, without any insistence by defendant upon any right to completion of the trial by the first jury, jeopardy did not attach. *United States v. A. D. Sedgwick* (D.C. App. 1975, 345 A. 2d 465; cert. denied 96 S. Ct. 1751, — U.S. —).

Where Family Division's sua sponte declaration of mistrial in fact-finding hearing on petition charging juvenile with robbery was not dictated by manifest necessity, retrial of juvenile is barred by constitutional prohibition on double jeopardy. *District of Columbia v. I. P.* (D.C. App. 1975, 335 A.2d 224).

Where the same sovereignty is involved, the double jeopardy principle bars multiple prosecutions for the same offense by different elements of that sovereignty, and under that principle, multiple prosecutions by the District of Columbia and the United States are barred. *United States v. A. B. Knight* (1974, 509 F.2d 354, 166 U.S. App. D.C. 21).

If anything, the federal mail robbery statute contemplates a single conviction, not multiple convictions, when the first tier of mail robbery is aggravated by the use of a deadly weapon. *Id.*

Fact that mistrial was declared in first prosecution of defendant for armed robbery would not, under the doctrine of collateral estoppel, preclude his conviction on one count of armed robbery in second prosecution, where jury in the first trial had made no findings, so that defendant's presence as one of the robbers was not inconsistent with these results. *United States v. R. N. Perry* (1974, 504 F. 2d 180, 164 U.S. App. D.C. 111).

Due process

Where alibi witness threatened victim of armed robbery outside courtroom, immediate arrest of witness, which resulted in witness' decision to invoke privilege against self-incrimination if asked about threat and defense's subsequent decision not to call witness, was not governmental action preventing defendant from presenting his defense, and did not result in a denial of due process. *K. W. Swann v. United States* (D.C. App. 1974, 326 A.2d 813).

Elements of offense

Under an indictment for robbery, Government must prove assault and larceny. *United States v. C. McGill* (1973, 487 F.2d 1208, 159 U.S. App. D.C. 337).

Intent to steal is material element necessary to offense of robbery. *United States v. L. T. Robinson* (1973, 475 F. 2d 376, 154 U.S. App. D.C. 265).

Evidence

Evidence of narcotics dealing was appropriate means of establishing Government's theory that defendant had induced accomplice to commit robbery in order to obtain additional narcotics and to pay for narcotics which he had previously purchased from defendant on credit. *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

— Admissibility

Statements made by defendants in casual conversation, out of the presence of police and immediately after homicide and robbery, offered to prove that defendants had recently engaged in some violent episode together, were admissible as admissions of a party opponent, each defendant adopting the other's statement. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

Where there was nothing to indicate that search warrant was issued for any offenses other than those for which defendant was on trial and testimony was simply that an officer went to the apartment to execute the warrant, found defendant there, and recovered the shotgun

later identified as the weapon used during the robbery, testimony that a search warrant was executed at his apartment did not implicate him in another crime. *United States v. J. E. Jackson* (1974, 509 F.2d 499, 166 U.S. App. D.C. 166).

Where robbery victim testified that shotgun found in defendant's apartment was similar to the shotgun which one of the robbers had, informant testified that the shotgun belonged to defendant and that defendant had it when he left the apartment with another person to commit the robbery, the shotgun was properly admitted into evidence in prosecution for armed robbery. *Id.*

Permitting police officer to testify regarding direction from which shot causing bullet hole in wall was fired did not constitute an abuse of discretion in prosecution for armed robbery and for carrying a dangerous weapon. *United States v. A. E. Pierson* (1974, 503 F. 2d 173, 164 U.S. App. D.C. 82).

Testimony by accomplices as to statements which were made to them by defendant during commission of crimes charged in prosecutions for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary and which incriminated codefendants, were admissible under either exception to hearsay rule for contemporaneous declarations which partake of the event or exception for spontaneous declarations or excited utterances. *United States v. I. E. Leonard* (1974, 494 F.2d 955, 161 U.S. App. D.C. 36).

In prosecution for armed robbery, sawed-off shotgun seized at time of arrest was admissible where there was evidence as to resemblance of exhibit and gun used at scene of offense and trial judge commented that the gun could not be introduced as the gun used in the crime and that the question was for jury to determine. *United States v. T. McKinley* (1973, 485 F. 2d 1059, 158 U.S. App. D.C. 280).

Testimony that defendants had changed their appearance was admissible to provide basis for jury inference concerning reason that witnesses were unable to identify defendant in court. *Id.*

Court ordered lineup forms instructing each defendant not to alter his appearance prior to lineup were admissible even absent evidence that defendants had actually received notice of the orders where there was no testimony that orders had not been served or that defendants had not been informed of the provisions of the orders; prosecutor was entitled to proceed on presumption that court orders were in fact served, without adducing proof of such service. *Id.*

Testimony by police officer that he had overheard defendant threatening a witness with respect to witness' identification of him as the perpetrator of the crime and telling witness that she had been a fool to allow the policeman to trick her into identifying the defendant was admissible as evidence of an admission directly relevant to guilt and was not rendered inadmissible by the fact that it also contained evidence of another crime—obstruction of justice. *J. N. Smith v. United States* (D.C. App. 1973, 312 A. 2d 781).

— Disclosure to defense

Prosecutor's failure to provide defense in advance with lineup sheets showing two misidentifications or with four bullets found on defendant after his arrest was not reversible error where the lineup sheets showed that counsel for defendant was present at the lineups and the bullets were easily available to defense counsel in the Government's property office where counsel examined the money taken from his client. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

— Good character

Prosecutor cannot offer bad character evidence unless accused first introduces evidence of good character, and even then prosecutor's proof is restricted to community reputation and to trait and traits to which accused's own character evidence related. *United States v. J. A. Lewis* (1973, 482 F. 2d 632, 157 U.S. App. D.C. 43).

When character witness, either for accused or for prosecution, is offered, he is subject to cross-examination as to his testimonial qualifications just like any other witness, and probe on cross-examination may extend to those matters, among others, which legitimately affect witness'

knowledge of accused's community reputation for the character trait or traits which he confirms. *Id.*

Where at time judge ruled, during second trial for armed robbery and related offenses, that if defense put on good character witnesses then prosecution could cross-examine such witnesses to determine if they were aware of defendant's arrest for narcotics two weeks before commencement of second trial but ten months after the occurrence of offenses for which he was being tried, judge did not know whether witness would speak to reputation for peace and good order or as to reputation for truth and veracity, trial judge did not have essential information and ruling was error, but in view of government's case error was not prejudicial. *Id.*

— Sufficiency

Testimony by prison guards that they were locked in a cell and held as hostages, that defendant frequently checked the cell where the guards were confined, that he told the guards that he "had nothing to lose by going out looking," that defendant separated himself from a group of inmates who did not want to escape immediately before rebellious inmates clustered for breakout attempt, and that defendant thereafter came by the cell many times armed with a short piece of steel with a sharp end and threatened the hostages was sufficient to sustain defendant's convictions for attempted escape, armed kidnapping, robbery, and riot. *United States v. J. Bridgeman* (1975, 523 F.2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, — U.S. —).

Evidence, including testimony of identification witness, was sufficient to sustain conviction of armed robbery and assault with deadly weapon. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

Evidence in robbery prosecution was sufficient to support finding that defendant participated, with companion, in robbery of liquor store during which companion produced pistol and demanded money while defendant watched customers, and that second robbery of hostage outside store was not companion's independent frolic or unrelated to general criminal scheme. *United States v. M. J. Belt* (1975, 514 F.2d 837, 169 U.S. App. D.C. 1).

Testimony of robbery victim, who was confronted under streetlight, who was twice able to closely observe assailant as he leaned into her automobile, who described assailant and his attire in detail and who two days later identified defendant from third array of police photographs and also identified defendant at lineup and trial, is sufficient to support robbery conviction. *J. M. Russell v. United States* (D.C. App. 1975, 348 A.2d 299).

Evidence, including evidence of juvenile's close association with correspondent prior to and after purse snatching, juvenile's presence near scene of crime and his flight from scene with correspondent, is sufficient to support juvenile's conviction of robbery. *In the Matter of A. B. H.* (D.C. App. 1975, 343 A.2d 573).

Submission of robbery case to jury was warranted by evidence even though one eyewitness picked person other than defendant in lineup held approximately eight months after the incident. *T. Marshall v. United States* (D.C. App. 1975, 340 A.2d 805).

Testimony of single witness is sufficient to sustain armed robbery conviction, even though victim did not testify. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A.2d 746).

Evidence, including testimony that shotgun shells similar to those used in gun used in armed robbery were found in defendant's automobile, is sufficient to sustain convictions of armed robbery and assault with dangerous weapon. *D. Borrero v. United States* (D.C. App. 1975, 332 A.2d 363).

Evidence that deceased's rings came into possession of one defendant immediately after deceased had been killed and evidence that defendant stated that she had gotten the rings from the victim and was going to keep them sustained conviction of both person who kept the ring and person who aided in the murder for felony-murder on the basis of robbery. *United States v. M. Mackin* (1974, 502 F.2d 429, 163 U.S. App. D.C. 427; cert. denied 95 S. Ct. 629, 419 U.S. 1052).

Evidence sustained robbery conviction of defendant whose fingerprints were found by police on a dresser drawer in a generally locked woman's bedroom. *R. Hawkins v. United States* (D.C. App. 1974, 329 A.2d 781).

The fundamental principle respecting reasonable doubt applies to fingerprint cases, but the proof need not be to a certainty or negate all inferences pointing to innocence; the evidence, however, must negate at least the most reasonable explanations consistent with innocence and must tend to show placement of the fingerprints during the offense. *Id.*

Evidence sustained robbery conviction of defendant who was one of robber's companions watched commission of robbery, and ran from scene of crime with robber and other companion. *R. F. Creek v. United States* (D.C. App. 1974, 324 A.2d 688).

Positive identification by one eyewitness and somewhat tentative identifications by two other eyewitnesses were sufficient basis for finding juvenile guilty of robbery and assault with dangerous weapon. *In the Matter of W. K.* (D.C. App. 1974, 323 A.2d 442).

Evidence that victim had \$231 in his pocket and was carrying four or five packages when he was confronted by two men who held gun on him and went through his pockets and that victim told policemen that he had been robbed was insufficient to support armed robbery conviction. *United States v. C. McGill* (1973, 487 F.2d 1208, 159 U.S. App. D.C. 337).

Evidence, including evidence that defendant's fingerprints were found on both sides of pane of glass removed from back door to apartment and that prints were found on surface of glass covered by molding strips which secured window in door, were sufficient to sustain determination that defendant was person who entered complainant's apartment. *United States v. J. E. Cary* (1972, 470 F.2d 469, 152 U.S. App. D.C. 321).

If evidence in armed robbery prosecution did not warrant findings that the \$500 involved was taken from victim's person or immediate actual possession, then jury could only have properly found defendants guilty of the lesser included offense of grand larceny. *United States v. T. B. Dixon* (1972, 469 F.2d 940, 152 U.S. App. D.C. 200).

— Suppression

Though a crime of violence with a suspect reasonably believed to be armed was involved, warrantless entry by police into motel room occupied by defendant was invalid and required suppression of evidence found in room subsequent to entry, where police possessed no evidence at all connecting defendant to crime at time of entry, defendant was not placed under arrest until police began discovering evidence of crime in room, circumstances cast doubt on assertion that police had strong reason to believe that a suspect was on premises, arguments for and against likelihood of escape without swift apprehension were of equal weight, and entry, even assuming that it was peaceful, occurred during early morning hours so as to compound possible inadequacy of showing of probable cause. *United States v. J. Lindsay, Jr.* (1974, 506 F.2d 166, 165 U.S. App. D.C. 105).

Identification

Where witness observed bank robber from as close as ten feet from safety of automobile and with specific purpose of later identifying robber, witness' description of robber and his automobile matched that of defendant, in showup in bank soon after robbery, defendant was not in handcuffs or behind bars, was not clothed in way witness described robber and witness identification of defendant was from his face rather than by general appearance or build, and possibly suggestive presence of defendants' automobile where witness could see it was at instance of defendant's companion not of policy, confrontation was not impermissibly suggestive. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

Defendant was not denied due process of law because the police utilized a photo identification procedure rather than a corporeal lineup since defendant was already in custody where the photographic display was designed to test unverified information from a paid informant that defendant was one of the robbers and there was no evidence that the photographic display was in any way

suggestive. *United States v. J. E. Jackson* (1974, 509 F.2d 499, 166 U.S. App. D.C. 166).

The Government's prerogative to show testimonially pretrial photographic identifications extends to testimony of identifications based on "mug shot" photographs; however, the objectionable features of the "mug shots" should be eliminated *Id.*

Where photographs were displayed to witnesses prior to defendant's arrest, three of eyewitnesses viewed photographs just 11 days after robbery occurred, each witness individually inspected at least six photographs, and there was no indication that the authorities who conducted photographic identifications made any suggestive comments to identifying witnesses, identification procedure was not such as to deny defendant due process of law. *United States v. R. L. Scriber* (1974, 499 F. 2d 1041, 163 U.S. App. D.C. 36).

Where complainant in armed robbery prosecution immediately recognized picture of defendant in police photograph book, and where there was identification evidence by another witness, there was no substantial likelihood of misidentification even though complainant did not announce her discovery until she found, from an index in the back of the book, that the subject's name was the same as that previously given to her by a bystander as the name of her assailant; however, in the interest of avoiding suggestiveness, police should seek procedures whereby index could be kept unavailable to witnesses until after photograph has been identified. *United States v. L. C. McBride* (1974, 499 F. 2d 525, 162 U.S. App. D.C. 389).

Testimony of operator of coin-operated laundry and dry cleaning establishment that he had seen defendant many times before robbery, that room was well lighted, and that he had opportunity to observe robber for about 30 seconds, was sufficient for jury on issue of identity in armed robbery prosecution. *United States v. E. L. Inge, Jr.* (1974, 494 F.2d 1102, 161 U.S. App. D.C. 183).

Identification procedures were not so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification though officer told witness that photo of suspect was included in photographic array, where in photographic identification robbery victim chose two photographs of men whom he thought resembled the robber, one of which was defendant, and in subsequent lineup, robbery victim failed to identify defendant at all. *G. S. Crawley v. United States* (D.C. App. 1974, 328 A. 2d 777).

Where armed robbery victim had previously seen defendant in her apartment building on several occasions before offense and on very day of offense, there was no danger of misidentification, and thus there was no prejudicial error in one-man showup or in inability of police officer at trial to reconstruct photographic array from which victim identified defendant. *K. W. Swann v. United States* (D.C. App. 1974, 326 A. 2d 813).

Where robbery victim was shown 12 photographs, where defendant's photograph, which victim identified, contained only a full face view, while the other 11 contained both a full face and a profile view, the difference in format was not, as a matter of law, so suggestive as to violate due process. *United States v. E. L. Sherry* (D.C. App. 1974, 318 A.2d 903).

Because there is some degree of suggestiveness when police officer indicates to witness that suspect's picture is among photographs in array, impeachment of witness on this point is relevant factor to be considered by jury in judging weight to be given photographic identification, particularly where there is only one eyewitness. *M. A. Hampton v. United States* (D.C. App. 1974, 318 A.2d 598).

Confrontation in which robbery victim viewed defendant while he was lying face down on floor and was handcuffed with his arms behind his back was permissible and was not highly suggestive where confrontation took place within few minutes of robbery and almost at scene of crime in building in which it occurred. *United States v. R. J. Lee, Jr.* (1973, 485 F. 2d 1075, 158 U.S. App. D.C. 296).

Factors to be evaluated in determining whether a particular identification stems from events other than an illegal pretrial confrontation are: witness' prior opportunity to observe criminal act and party committing it, existence of any discrepancy between any description of

perpetrator given by witness and accused's appearance, any identification by witness of someone other than accused, and identification of a photograph of accused, any failure by witness to identify accused prior to in-court identification, and lapse of time between criminal acts and identification. *United States v. A. Holiday* (1973, 482 F. 2d 729, 157 U.S. App. D.C. 140).

In view of fact that the eight photographs shown witnesses on day of robbery gave no indication of height and that among these photographs defendant's was only one whose facial hair was in any way comparable to initial uncertain descriptions given by witnesses, and in view of fact that at lineup defendant was only man whose picture had been shown to witnesses and defendant was the tallest man, and only heavyset, stout person who had a full mustache and full goatee, there was a very substantial likelihood of irreparable misidentification by witnesses due to suggestive identification procedures, considered with discrepancies and uncertainties in their testimony, and their in-court identifications were inadmissible. *United States v. H. Sanders* (1973, 479 F. 2d 1193, 156 U.S. App. D.C. 210).

Where there was substantial doubt as to validity of uncorroborated identification evidence, which was provided by two alleged victims in prosecution for robbery and assault with a dangerous weapon and on which conviction was based, case would be remanded to permit district court to make fresh determination as to action which should be taken in interest of justice. *United States v. L. Harris* (1973, 475 F. 2d 359, 154 U.S. App. D.C. 248).

Where defendant and companions were arrested within 30 minutes following jewelry store robbery and about 19 blocks from jewelry store with plastic bag containing two trays of the stolen rings, it was reasonable for officers to bring defendant to scene of robbery for confrontation, and in-court identification of defendant by principal victim who had opportunity to observe robber at distance of about 18 inches under excellent lighting conditions was admissible for jury consideration. *United States v. R. McCoy* (1973, 475 F. 2d 344, 154 U.S. App. D.C. 233).

In light of fact that complaining witness had a long and proximate opportunity to observe and study face of her attacker, and had previously made a prearrest photographic identification, there was enough to support finding of clear and convincing evidence of an independent source for subsequent identifications. *United States v. E. Smith* (1972, 473 F. 2d 1148, 154 U.S. App. D.C. 111).

Failure of the trial court, in absence of request, to give a special instruction on identification in robbery prosecution in which the case turned on the testimony of a single witness was not prejudicial where the witness had an adequate opportunity to observe and made a spontaneous identification and where the instructions given with respect to burden of proof, alibi, and problem of mistaken identity significantly focused attention on the issue of identity. *United States v. M. Telfaire* (1972, 469 F. 2d 552, 152 U.S. App. D.C. 146).

— In-court

In-court identification of defendant as robber by eyewitness who observed robber approximately 15 minutes as robber held gun at eyewitness' head had source independent of alleged tainted pretrial photographic identification and is admissible. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A.2d 746).

Excellent opportunities that identification witnesses had to observe defendant during robbery of United States post office were sufficient to provide a solid independent basis for their in-court identifications despite any later taint created by suggestive pretrial lineups, and thus defendant was not denied due process by court's refusal to suppress eyewitnesses' in-court identifications. *United States v. R. L. Scriber* (1974, 499 F. 2d 1041, 163 U.S. App. D.C. 36).

Fact that neither of two eyewitnesses to holdup had made any pretrial identification of juvenile as one of robbers did not preclude in-court identification of him by those witnesses on theory that such in-court identification was tainted with suggestion, because confrontation occurred when he was seated at defense counsel table, rather than among several individuals of similar physique in police lineup. *In the Matter of W. K.* (D.C. App. 1974, 323 A. 2d 442).

In-court identifications made of accused by two lineup witnesses were admissible, though witnesses had attended an apparently unadvised pretrial lineup, where it was illustrated sufficiently in record that identifications were based on their observation of him during robbery. *United States v. A. Holiday* (1973, 482 F. 2d 729, 157 U.S. App. D.C. 140).

Government established, in prosecution for rape while armed and armed robbery, by clear and convincing evidence that the in-court identifications of defendant by the victims were based on observation of suspect rather than on drawing of man submitted to victims for identification, and identification procedure was not improper. *United States v. R. E. Adams, Jr.* (1973, 481 F. 2d 1099, 156 U.S. App. D.C. 415).

— Lineup

Although police officers' remarks to complainant to effect that boy whom she had previously identified by photograph as purse snatcher would be in lineup would have been better left unsaid, they do not render the lineup identification so suggestive as to give rise to substantial likelihood of misidentification. *T. Marshall v. United States* (D.C. App. 1975, 340 A.2d 805).

Even if defendant's hairstyle was in some degree suggestive, it did not so distinctively mark him as to generate a substantial likelihood of misidentification by robbery victim who selected defendant from 11-man lineup as the gunman where the victim observed the robber bearing the shotgun over period of 15 or 20 minutes, throughout which she was in close proximity to the gunman and her successive identifications of defendant were consistent and invariably emphatic. *United States v. J. E. Jackson* (1974, 509 F.2d 499, 166 U.S. App. D.C. 166).

Where defendant was lawfully in custody, police were authorized to place him in lineup in connection with unrelated offense. *United States v. J. F. Anderson* (1974, 490 F. 2d 785, 160 U.S. App. D.C. 217).

Evidence of an identification of an accused made at an invalid lineup may not be introduced by Government in first instance, though accused may, if he chooses, show events which transpired at a faulty lineup, and, if he does, Government is entitled to respond, but unless accused initiates subject, evidence of identification is per se inadmissible, and unless constitutionally harmless is reversible error. *United States v. A. Holiday* (1973, 482 F. 2d 729, 157 U.S. App. D.C. 140).

Where only eyewitness, who had been present at two robberies in question, failed to identify defendant at formal lineup held shortly after his arrest and other eyewitnesses' views of defendant had been taken under less than ideal circumstances several weeks after robberies, denial of pretrial motion by defendant for an order for a lineup was error, and such error required that conviction be set aside and that indictment be dismissed, in light of fact that holding of a lineup would no longer be a meaningful step. *United States v. G. E. Caldwell* (1973, 481 F. 2d 487, 156 U.S. App. D.C. 312).

Where there was no showing that lineup was impermissibly suggestive or that victim of crime was led by police into identification of defendant, where inconsistencies in victim's testimony were attributable solely to difficulty victim experienced in use of English language, where three other persons identified defendant, and where victim's identification of defendant in lineup was unequivocal and based upon excellent opportunity to view defendant during robbery, lineup identification by victim was properly admitted. *J. L. Skinner v. United States* (D.C. App. 1973, 310 A. 2d 231).

— Photographic

Fact that defendant's clothes in photographic display somewhat resembled clothes which robbery victim said armed robber wore does not render the photographic display impermissibly suggestive in view of total number of pictures, 150, and number of men of comparable age and appearance in the array. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

Array of photographs which was not available at trial and which was assembled by selecting from arrest files photographs of 10 to 20 individuals bearing same surname as defendant is not presumed to have been unduly suggestive so as to require exclusion of pictorial identifica-

tion by robbery victim who had been informed by bystander that one robber had certain surname and who relayed such information to police, where police did not know whether defendant's photograph was in such array and did not inform robbery victim that photographs were of persons having surname relayed to them. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A.2d 746).

Immediate actual possession

A thing is within one's "immediate actual possession" for purposes of robbery statute so long as it is within such range that such person could, if not deterred by violence or fear, retain actual physical control over it. *United States v. T. B. Dixon* (1972, 469 F. 2d 940, 152 U.S. App. D.C. 200).

Where defendants approached victim and positioned themselves on either side of him and one said, "Let me have it," while one stuck a pistol against victim's ribs, and where victim attempted to toss envelope containing money to a stranger and one of the defendants immediately picked up the envelope and ran, joined by the other defendant, defendant's act of picking up the envelope, if it did not constitute a taking from the "person" of the victim, at least constituted taking from victim's "immediate actual possession" within robbery statute. *Id.*

Impeachment

Defendant was properly impeached by use of prior inconsistent statement given by him to representative of District of Columbia Bail Agency in the prosecution of offense for which the Bail Agency statement was given. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

In prosecution of two defendants for armed robbery, admission of prior inconsistent statement of one defendant which implicated second defendant in armed robbery was not error where statement was introduced for purposes of impeachment and jury was specifically instructed not to consider impeaching testimony as substantive evidence of second defendant's involvement in the armed robbery. *D. Borrero v. United States* (D.C. App. 1975, 332 A.2d 363).

Refusal, in criminal prosecution, to admit testimony regarding effect of drug use on perception for purposes of impeaching testimony of accomplice, who testified for government and who was a heroin user, unless it was established that accomplice had used narcotics on day of offenses was not error. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Test of whether witness statements concern collateral matters, so as not to be subject to impeachment, is whether fact as to which statement is predicated could have been independently shown in evidence for any purpose. *M. A. Hampton v. United States* (D.C. App. 1974, 318 A. 2d 598).

Trial court erred when it precluded defendant's counsel from attempting to impeach complaining witness' testimony that she had been told that suspect had been arrested after she viewed police photographs by bringing out witness' grand jury testimony that she had viewed photographs only after being informed of suspect's arrest. *Id.*

Indictment

The Government may properly charge in the same indictment offenses against both the federal bank (savings and loan) robbery statute and the local armed robbery statute, provided defendant is not ultimately sentenced under two statutes proscribing essentially the same offense. *United States v. R. Shepard* (1975, 515 F. 2d 1324, 169 U.S. App. D.C. 353).

Robbery count charging defendants with taking money, the property of grocery store, and pistol, the property of security guard was not duplicitous but rather charged that one person, the guard, was robbed of the pistol and the money he was guarding, and, in any event, defendants waived any defect by not protesting before trial. *United States v. J. F. Bolden* (1975, 514 F. 2d 1301, 169 U.S. App. D.C. 60).

Robbery count of indictments charging that defendants by force and violence and against resistance and by putting in fear stole and took from specified person certain specified property is sufficient to charge robbery under this section, contrary to claim of defendants that

it fails to allege all the material and necessary elements of robbery; use of word "stole" put defendants on notice that specific intent is an element of crime with which they were charged. *United States v. W. N. Owens et ano.* (D.C. App. 1975, 332 A.2d 752).

Refusal to amend robbery count at beginning of trial to include allegation of specific intent to steal was not prejudicial where clear, detailed, and thorough instructions were given; however, it is urged that indictment forms be updated and refined. *United States v. L. T. Robinson* (1973, 475 F. 2d 376, 154 U.S. App. D.C. 265).

— Dismissal

Since, even if urine test which Government had not produced would have convinced jury that defendant, as a result of intoxication, did not have requisite intent to commit robbery, there was proof beyond reasonable doubt of lesser included offense of simple assault, which does not require proof of specific intent, defendant would not be entitled to dismissal of indictment even if test were shown to have been made and were shown to have been of potential value to defendant. *United States v. J. L. Butler* (1974, 499 F. 2d 1006, 163 U.S. App. D.C. 1).

Inferences

From a defendant's failure to produce a witness who might reasonably have been expected to verify defendant's alibi, courts usually allow prosecutors to draw inference that testimony of such witness would not have supported the alibi. *United States v. A. A. Freeman* (1975, 514 F.2d 1314, 169 U.S. App. D.C. 73).

Where defendant's taking stand lacked probative value in itself, inferences which government sought to draw from it, such as that it was indicative of guilt, could only serve to confuse and mislead jury, and such tactic did not become prosecutor, as exemplar of fairness and justice in the criminal system. *Id.*

Inference of guilt arising from possession of recently stolen property is not an inference of one of the essential elements of the offense, but only of the identity of the perpetrator of the offense of theft independently proven. *L. Irby v. United States* (D.C. App. 1975, 342 A.2d 33).

Jury may infer from change in appearance by someone who has been called to appear in a lineup that change reflects an awareness of guilt and fear of identification. *United States v. T. McKinley* (1973, 485 F. 2d 1059, 158 U.S. App. D.C. 280).

Inference that, since defendant has violated the law in one respect, he is likely to have violated the law defining the offense charged in the indictment is not permitted lightly, except as to certain defined categories. *Id.*

Instructions

Trial court properly instructed jury on testimony of accomplices rather than testimony of informers with respect to testimony of witness who had pled guilty to one count of indictment under which he and defendant were charged on the day before defendant's trial and who had participated in the crime with defendant. *United States v. M. W. Thorne* (1975, 527 F.2d 840, — U.S. App. D.C. —).

Communication between judge and jury in the absence of the defendant and his counsel and the trial court's refusal to give any instructions concerning one "holdout" was not prejudicial error where the defendant did not object prior to the verdict, there was no complaint that the jury had been coerced into agreement during the deliberation and no objection was raised until motion for new trial. *United States v. T. B. Diggs* (1975, 522 F. 2d 1310, 173 U.S. App. D.C. 95; rehearing en banc denied 535 F.2d 1299, — U.S. App. D.C. —).

Where soon after retiring jury requested instruction on whether aiding and abetting instruction applied to armed robbery count of indictment as well as assault charge, trial court's charging jury that aiding and abetting instruction was applicable to both counts in absence of defendant was, at most, harmless error. *United States v. J. Jones, Jr.* (1975, 517 F.2d 176, 170 U.S. App. D.C. 362).

Omission of an instruction that voluntary narcosis could negate specific intent to commit the robbery was not plain error, where defense counsel never requested such an instruction, where he previously admitted that defendant's actions indicated that he was not under the

influence of narcotics when he confessed, where counsel indicated his satisfaction with the instructions as given, and where the evidence on the issue was not sufficient to require the court to give such an instruction in the absence of a request therefor. *United States v. R. Shepard* (1975, 515 F.2d 1324, 169 U.S. App. D.C. 353).

Trial court properly denied requested instruction of defendant, who was charged with robbery, to the effect that, in the experience of many, it is more difficult to identify members of a different race than members of one's own and that if such was the jury's experience it could consider that in evaluating the witness' testimony. *J. O. Abney v. United States* (D.C. App. 1975, 347 A. 2d 402).

In view of fact that evidence of plea of guilty to charge other than that on which defendant was being tried was not highly prejudicial, and where defendant did not request "immediate cautionary instruction" and instructions to jury constituted very fair charge with respect to use of prior conviction and evidence concerning defendant's involvement with narcotics, fact that immediate cautionary instruction was not given was not ground for relief. *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

Instruction on identification issue recited and approved. *United States v. E. L. Inge, Jr.* (1974, 494 F. 2d 1102, 161 U.S. App. D.C. 183).

Failure to give an accomplice instruction with regard to accomplices who testified for government was not plain error where nonaccomplice testimony corroborated accomplice testimony to significant extent against one accused and to lesser extent against another and where accomplices did not appear to have extraordinary disposition to prevaricate. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Refusal to instruct that testimony of accomplices, who testified for government after having been granted immunity, should be considered with caution was reversible error. *Id.*

Absent waiver of instruction, failure, in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, to give immediate limiting instruction as to admissibility where testimony of arresting officer was admitted to impeach defendant's testimony that he had not stated that codefendant "lived across the street" was plain error requiring reversal, though general instruction on impeachment evidence was given in very long charge. *Id.*

Instruction that jury could infer from the unexplained or unsatisfactorily explained possession of stolen money orders that defendants were guilty of taking such money orders, that defendant's possession of the recently stolen property did not shift burden of proof and that Government always had burden of proving beyond reasonable doubt every essential element of offense did not place burden on defendants, alone, to testify and explain satisfactorily their possession of stolen money orders. *United States v. J. M. Joyner* (1974, 492 F. 2d 650, 160 U.S. App. D.C. 384; cert. denied 95 S. Ct. 94, 419 U.S. 852).

Where jury had commenced its deliberations in prosecution for armed robbery, assault with a dangerous weapon, receiving stolen property, and carrying a pistol without a license, when it presented to the court a question concerning the armed robbery count, the court did not abuse its discretion by giving, in the face of defendant's objection but in the absence of a request to present argument, a supplemental instruction on aiding and abetting. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A. 2d 587).

Where police officer, testifying in trial of defendants charged with armed robbery, admitted that he had previously testified under oath that there was only one witness to the crime, when he knew that there were two witnesses, and where police officer stated that he so testified in order to protect the second witness, it was not error for court, after instructing jury of the need to scrutinize with care the testimony of a witness who has previously lied under oath, to tell the jury it could take into consideration the reasons for the person's having previously lied. *J. N. Smith v. United States* (D.C. App. 1973, 312 A. 2d 781).

Instruction with respect to identification in prosecution for burglary, rape, and robbery was sufficient for

circumstances of case wherein complaining witness did not identify defendant but identity was established from fingerprint evidence. *United States v. J. E. Cary* (1972, 470 F. 2d 469, 152 U.S. App. D.C. 321).

Jencks Act

In proceeding in which juvenile was adjudged to have committed robbery, refusal to strike testimony of complaining witness when police officer was unable to produce his notes of an interview with witness is not reversible error, in that such "rough" and "almost illegible" notes do not constitute a "statement" within purview of Jencks Act. *In the Matter of A. B. H.* (D.C. App. 1975, 343 A.2d 573).

In proceeding in which juvenile was adjudged to have committed robbery, even if police officer's notes of an interview with complaining witness constitute a "statement" within purview of Jencks Act, refusal to strike such witness' testimony due to officer's inability to produce such notes was not an abuse of discretion. *Id.*

In prosecution for armed robbery, in view of extensive pretrial discovery of other Jencks material, in some of which statements made by victim to police officer who lost notebook containing notes of initial conversation with victim were incorporated, availability of police officer to testify as to contents of his notes, and fact that defendant was not arrested as a result of any description given police officer but rather was arrested following on the scene identification by victim of defendant as participant in assault and robbery, any possibility of prejudice caused defendant by loss of notes was remote. *E. W. Jones v. United States* (D.C. App. 1975, 343 A.2d 346).

In the process of balancing rights of accused and public interest when relevant Jencks Act material has been non-purposefully lost or destroyed, imposition of sanction less severe than striking testimony of witness involved or declaring a mistrial may be indicated, and thus in a proper case, trial judge may in lieu of any other sanction charge jury with variant of so-called missing witness instruction. *Id.*

It was error for trial court not to conduct inquiry into nature of notes taken by prosecutor when interviewing witness before determining that the notes were, as contended by prosecutor, not substantially verbatim and thus not required to be produced for defendant. *G. J. Matthews v. United States* (D.C. App. 1974, 322 A. 2d 908).

It was error for trial court not to determine whether certain police forms and radio runs, which contained initial description of robber given to police by witness and which related to robberies in which defendant, who was charged with robbery, was believed to be a suspect and to which witness who was identifying defendant in the instant case had also been an eyewitness, were producible under the Jencks Act. *Id.*

Joinder

Review of record showed that the similarity of circumstances surrounding the two criminal episodes on which charges of rape while armed and armed robbery were based were sufficiently remarkable to prove that there was a reasonable probability that the same person committed the crimes and there was no prejudice in the joinder of both crimes in one trial. *United States v. R. E. Adams, Jr.* (1973, 481 F. 2d 1099, 156 U.S. App. D.C. 415).

In view of fact that scene of armed robbery and assaults on January 17 was different from that of armed robbery and assault on January 11 and assaults on January 16, the victims were different, and only common factor was that in each case the offender was a man wearing a fur coat and fur hat, and that there was no evidence of a common scheme or plan embracing commission of all of the offenses, it was prejudicial error to join trial of charges relating to offenses on January 17 with trial on other counts alleging offenses on January 11 and January 16, notwithstanding Government's contention that evidence of each offense was simple and distinct so that jury could not possibly have been confused. *United States v. T. E. Carter* (1973, 475 F. 2d 349, 154 U.S. App. D.C. 238).

Jury

Where there was no showing which would cause trial judge to inquire into possible prejudice against the defendant because he was black, the defendant did not exhaust the peremptory challenges to which he was entitled and no effort was made by detailed questions to

disqualify any prospective juror, it was not error for the trial judge to decline to permit defense counsel to inquire whether the prospective jurors "have had any dealings or experience with black persons that might make it difficult for them" to sit in judgment on the case. *United States v. T. B. Diggs* (1975, 522 F. 2d 1310, 173 U.S. App. D.C. 95; rehearing en banc denied 535 F.2d 1299, — U.S. App. D.C. —).

— Poll

Trial court committed reversible error by continuing to poll jury after first juror had indicated she did not agree with guilty verdict on the first armed robbery count, notwithstanding government hypothesis that dissenting juror was confused by multiple-count indictment, since trial judge, rather than stopping poll and questioning juror to determine if she were confused by indictment, chose to continue the poll. *J. Kendall v. United States* (D.C. App. 1975, 349 A. 2d 464).

Lesser included offense

Assault with dangerous weapon on motel clerk was lesser included offense of armed robbery of same person, and conviction of former could not stand as conviction for another offense. *United States v. H. E. Lee* (1974, 509 F.2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

It was improper to convict defendant both for assault with a dangerous weapon and armed robbery where the assault was a necessary part of the evidence needed to support the count of armed robbery. *R. Taylor v. United States* (D.C. App. 1974, 324 A. 2d 683).

Assault with dangerous weapon was lesser included offense of armed robbery; thus, defendants could not be convicted of both three counts of armed robbery and three counts of assault with a deadly weapon and convictions of assault would be reversed. *United States v. T. McKinley* (1973, 485 F. 2d 1059, 158 U.S. App. D.C. 280).

Under District of Columbia statute assault with a dangerous weapon is a lesser included offense of robbery while armed. *United States v. J. Johnson* (1973, 475 F. 2d 1297, 155 U.S. App. D.C. 28).

Where jury returned a verdict of guilty on each of four counts of robbery while armed involving different victims it was error to receive verdicts from the jury on the four counts of assault with a dangerous weapon, a lesser included offense, with respect to the same victims. *Id.*

Mental capacity

Record, including testimony of a private psychiatrist who examined defendant at government expense, was sufficient to support finding that criminal acts committed by defendant (armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon) were not so proximately tied to defendant's mental impairments as to require his exculpation. *United States v. G. A. Wilson* (1972, 471 F. 2d 1072, 153 U.S. App. D.C. 104; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Merger of offenses

Armed robbery, committed after burglary, is not lesser included offense of first-degree burglary or an offense coextensive with first-degree burglary but an offense separate and distinct from burglary so that defendant can be convicted of both offenses. *W. Strickland, Jr. v. United States* (D.C. App. 1975, 332 A.2d 746).

Where, in course of armed robbery, shotgun was pointed at two distinct individuals at different times, there was no error in entering separate judgments of conviction of armed robbery and assault with dangerous weapon. *D. Borrero v. United States* (D.C. App. 1975, 332 A.2d 363).

Where assault with dangerous weapon offense was submitted to jury on specific instruction that it could convict on assault with dangerous weapon charge only if it found that separate and apart from pointing the gun at complaining witness, the complaining witness was beaten with the gun, and jury returned verdict of guilty, assault with dangerous weapon was not a lesser included offense within the armed robbery, offenses did not merge, and punishment for both did not constitute cumulative punishment. *C. M. Dixon, Jr. v. United States* (D.C. App. 1974, 320 A. 2d 318).

Housebreaking and robbery convictions can stand together since robbery and burglary statutes which codify common law protect distinct societal interests. *Id.*

Convictions of assault with a dangerous weapon merged with armed robbery convictions connected with same robbery of drugstore and would thus be set aside. *United States v. T. R. Toy* (1973, 482 F. 2d 741, 157 U.S. App. D.C. 152).

Where armed robberies and assaults with a dangerous weapon were committed against same persons, latter offenses merged into former, and convictions on assault charges could not stand, though a remand for resentencing was not required where defendant had been given separate sentences, and all sentences were set to run concurrently. *United States v. A. Holiday* (1973, 482 F. 2d 729, 157 U.S. App. D.C. 140).

A count charging assault with a dangerous weapon is merged with a count charging armed robbery. *J. N. Smith v. United States* (D.C. App. 1973, 312 A. 2d 781).

Miranda rights—Waiver

In armed robbery prosecution, in which it could have been inferred, from evidence that defendant was unwilling to have his statements recorded in writing, that defendant had mistakenly assumed that only written statements could be used against him, Government sustained its burden of establishing a knowing waiver by defendant of his right to independent legal assistance after his arrest. *United States v. E. R. Frazier* (1973, 476 F. 2d 891, 155 U.S. App. D.C. 135).

It was not for police officer to place legal interpretation on language of Miranda warnings he was directed to give and to continue or suspend interview in accordance with what that interpretation might be, and even though it could be inferred from defendant's unwillingness to have his statements recorded in writing that he mistakenly assumed that only written statements could be used against him, allowing defendant to pursue his evident desire to keep on talking was neither an unreasonable nor a deceptive tactic on police officer's part which deprived defendant of due process; especially where defendant had already confessed his most serious crime before note-taking episode occurred. *Id.*

Mistrial

Defendant was not entitled to a mistrial on ground that the jury, in its request for additional instructions, had made an unsolicited disclosure of its numerical division. *United States v. T. B. Diggs* (1975, 522 F.2d 1310, 173 U.S. App. D.C. 95; rehearing en banc denied 535 F.2d 1299, — U.S. App. D.C. —).

Possession

"Possession" as used in robbery statute does not mean strict legal ownership, but rather "custody or control" in a colloquial sense. *United States v. T. B. Dixon* (1972, 469 F. 2d 940, 152 U.S. App. D.C. 200).

Prearrest delay

Record was devoid of any indication that delay in arresting defendant, which occurred ten months after date of the offenses, was the product of any deliberate effort by police to gain an advantage, record furnished abundant evidentiary support for finding that a reasonable endeavor was made to locate defendant and, in addition, record sustained additional finding that, in any event, defendant was not harmed by the delay, in prosecution for armed robbery, assault with a dangerous weapon, and for carrying a pistol without a license. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S.Ct. 1430, 410 U.S. 957).

Probable cause

Police officer who knew that armed robbery had been committed, who had a description of the robber from the victim, who had the admission of one person who appeared to be a coconspirator that it was committed by defendant, who was told that defendant could be found in a certain apartment, and who arrived at the apartment and found defendant hiding between the mattress and box springs of a bed had probable cause to arrest defendant without a warrant. *T. Johnson v. United States* (D.C. App. 1975, 349 A. 2d 458).

Where officers had received a citizen's complaint of a robbery, together with description of assailants and car in which they escaped, officers pulled a car to curb because it and its occupants substantially matched description given in radio broadcast which officers had received and

one officer upon looking into car observed a coat similar to that described as taken in the robbery, there was probable cause to arrest occupants, and to seize the tangible evidence of the crime. *L. Irby v. United States* (D.C. App. 1975, 342 A.2d 33).

— Entry without warrant

Fact that police uncovered ample evidence to establish probable cause to arrest defendant once they entered motel room was of no relevance to question whether initial warrantless entry was valid. *United States v. J. Lindsay, Jr.* (1974, 506 F. 2d 166, 165 U.S. App. D.C. 105).

Prosecution

It is not a denial of due process for the Government to choose to prosecute under a federal statute which imposes a greater penalty than an identical local statute; and this reasoning applies with equal force to the situation where the local statute provides greater penalties than the federal statute. *United States v. R. Shepard* (1975, 515 F.2d 1324, 169 U.S. App. D.C. 353).

Prosecutor's remarks

In prosecution for armed robbery, allegedly improper prosecutorial remarks did not affect substantial rights of defendant where such remarks were not referenced to defendant's failure to testify in his own defense and where trial court gave adequate curative instruction. *E. W. Jones v. United States* (D.C. App. 1975, 343 A. 2d 346).

Reversible error

In view of narrow base on which armed robbery prosecution rested, reviewing court could not say with fair assurance that jury was not substantially swayed by combined effect of errors in admitting hearsay, in permitting prosecutor's comment thereon and in permitting other confusing and misleading comments of prosecutor including comment on defendant's taking stand; and reversal of conviction was thus necessary. *United States v. A. A. Freeman* (1975, 514 F. 2d 1314, 169 U.S. App. D.C. 73).

Right to counsel

Fact that defendant was already in custody on charge of possession of a sawed-off shotgun did not preclude the police from conducting, in the absence of counsel, a photographic identification in order to link defendant with armed robbery. *United States v. J. E. Jackson* (1974, 509 F. 2d 499, 166 U.S. App. D.C. 166).

Sixth Amendment does not grant an accused the right to have counsel present at government conducted post-indictment photographic display containing a picture of accused for purpose of allowing witness to attempt identification of offender in absence of accused. *United States v. C. J. Ash, Jr.* (1973, 93 S. Ct. 2568, 413 U.S. 300; rev'g and remand'g 461 F. 2d 92, 149 U.S. App. D.C. 1).

Search and seizure

Tenant who called attention of police officers, who had just arrested defendant in tenant's apartment, to a refrigerator in the outside hall consented to the search of the refrigerator so that items found therein are admissible against defendant. *T. Johnson v. United States* (D.C. App. 1975, 349 A.2d 458).

Where defendant's car fit description given by accomplice and another witness and was found in vicinity of defendant who met description given by the accomplice, and where defendant voluntarily surrendered his keys to police and they fit car, tying car to evidence of its use, there was probable cause for seizure of the car, and police could either seize and hold car or make immediate warrantless search, and where it was difficult to make detailed search of car where it was found, subsequent search at station house, 24 hours later, was reasonable; police had duty to act as quickly as possible to obtain evidence that might exonerate or incriminate, and there were thus exigent circumstances. *United States v. H. E. Lee* (1974, 509 F. 2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

Search of closet, which contained partially-dressed defendant's clothing, for weapons, was incident to arrest, since closet was area from which defendant might have gained weapon at time when he was to secure additional clothing, and seizure of trousers, which fit description given by victim, was proper since they were in plain view

during valid search. *J. L. Walker v. United States* (D.C. App. 1974, 318 A. 2d 290).

Sentence

Where concurrent sentences imposed on each conviction for assault with a dangerous weapon were adjudged to run concurrently with burglary and armed robbery convictions, no remand for resentencing was necessary on vacation of convictions for assault with a dangerous weapon. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

Where 20-year-old defendant's prior sentence was served without services of youth center, section 5010(e), 18 U.S.C., report indicated that defendant's feeling of inadequacy lay with his inability, due to lack of marketable skills, to support himself and his family, reasons suggested in report for imposition of adult sentence for robbery without a weapon were that defendant was a "rather street-wise individual" and that he had failed to prove himself because he was on Youth Act probation when arrested and trial judge failed to state any independent reasons for imposing adult sentence, sentence was required to be vacated and case remanded for reconsideration of Youth Corrections Act treatment; section 5010(e) report failed to provide adequate reasons for denial of such treatment. *United States v. T. M. Phillips* (1973, 479 F. 2d 1200, 156 U.S. App. D.C. 217).

— Concurrent

Although a violation of the District of Columbia armed robbery statutes and a violation of the federal mail robbery statute required different elements of proof, and although, in the instant case, concurrent sentences were imposed, the conviction of defendants on both charges, arising from a single transaction, was improper, necessitating remand to the trial court with instructions to vacate the judgment on one of the counts and to resentencing on the other count. *United States v. A. B. Knight* (1974, 509 F. 2d 354, 166 U.S. App. D.C. 21).

— Consecutive

Where, during course of robbery of market, defendant robbed the property of the store owners and robbed a store employe of his own property, his wallet, the episode was not a "unitary transaction" but involved two distinct offenses. *United States v. T. B. Diggs* (1975, 522 F. 2d 1310, 173 U.S. App. D.C. 95; rehearing en banc denied 535 F. 2d 1299, — U.S. App. D.C. —).

Severance

Grant of severance was not required on ground that defendant could have called codefendant to testify that defendants were not together when homicide and robbery occurred where there was no indication that codefendant would have been willing to testify at defendant's trial, and if codefendant were to testify, Government's impeaching statement which was inculpatory of defendant would probably have surfaced. *United States v. J. F. Bolden* (1975, 514 F. 2d 1301, 169 U.S. App. D.C. 60).

Where prejudice to one defendant from prior inconsistent statement made by second defendant which implicated first defendant in crime was eliminated by instruction which cautioned jury to consider inconsistent statement only for purposes of impeachment of second defendant, denial, as untimely, of first defendant's motion for severance was not abuse of discretion. *D. Borrero v. United States* (D.C. App. 1975, 332 A. 2d 363).

Refusal to grant severance in prosecution for felony-murder, first-degree murder, armed robbery, robbery and second-degree burglary, was not prejudicial to defendant due to fact that evidence placing a codefendant at scene of crime was quantitatively and qualitatively greater than evidence against defendant where evidence against defendant was both substantial and compelling, jury was specifically instructed to determine guilt of each defendant by considering only his own conduct and evidence which applied to him and where verdicts demonstrated that jury fulfilled its obligation under charge. *United States v. I. E. Leonard* (1974, 494 F. 2d 955, 161 U.S. App. D.C. 36).

Fact that there was conflict in accused's defenses, in that codefendants relied on separate alibi defenses and defendant admitted his presence at scene of offenses and in that such defendant's efforts to discredit testimony that he and a codefendant knocked out victim assertedly

undermined such codefendant's alibi defense and fact that defendant did not testify and thus codefendants were precluded from cross-examining him did not so prejudice codefendants as to render refusal to grant severance an abuse of discretion where damaging implications of defendant's defense were corroborated by substantial testimony. *Id.*

Admission, in criminal prosecution in which a defendant did not testify, of admissible testimony as to such defendant's hearsay statements which incriminated codefendants did not require severance on ground that admission violated codefendants' right of confrontation where, even if codefendants were tried separately, such testimony would have been admissible and defendant probably would have invoked Fifth Amendment, where there was substantial other eyewitness testimony incriminating codefendants and where, since defendant was an accomplice, reliability of his hearsay declaration was "inevitably suspect." *Id.*

Where count of indictment charging defendant with carrying pistol on day of his arrest was dismissed for failure of proof before case was submitted to jury and indictment was retyped, omitting count, defendant was not prejudiced by court's refusal to sever such properly joined count from counts charging felony murder, first-degree burglary and armed robbery. *United States v. J. M. Joyner* (1974, 492 F.2d 650, 160 U.S. App. D.C. 384; cert. denied 95 S. Ct. 94, 419 U.S. 852).

Where admission of evidence concerning the close relationship between defendant and codefendant was clearly relevant to codefendant's defense of alibi and mistaken identity and there was no conflict in defenses, trial court did not err in refusing to grant defendant a severance. *G. S. Crawley v. United States* (D.C. App. 1974, 328 A. 2d 777).

Issue of whether severance should have been granted after codefendant testified in such manner as to negate planned joint defense was not preserved for appeal, where no motion was made to trial court upon which it could have exercised its discretion to grant a severance, and where defendant did not demonstrate any prejudice occasioned by his codefendant's testimony which would justify a holding of plain error in allowing the joint trial to proceed. *W. J. Edwards, Jr. v. United States* (D.C. App. 1974, 328 A. 2d 90).

Speedy trial

Fifteen-month delay between arrest and trial was such as to constitute a denial of defendant's right to a speedy trial where delay was not, at all times, attributable to defendant, who suffered personal prejudice by reason of fact that he was confined throughout period, though he continually pressed his motion for release pending trial, and where personal prejudice resulting from pretrial incarceration was exacerbated by fact that defendant was a youth being confined in an adult jail and fact that defendant was especially handicapped by his social and educational background. *United States v. W. H. Calloway* (1974, 505 F. 2d 311, 164 U.S. App. D.C. 204).

Thirteen months' delay between arrest and trial did not deny defendants their right to speedy trial where first seven months' delay was at least partially justifiable, one defendant was incarcerated only during that portion of period between arrest and trial in which delay was justifiable and longer period that other defendant spent in pretrial detention was attributable to fact that, having been released pending trial, he violated conditions of release and was reincarcerated. *United States v. E. L. Cooper* (1974, 504 F. 2d 260, 164 U.S. App. D.C. 191).

Fifteen months' interval between defendant's arrest and trial did not deny defendant the right to a speedy trial and thus entitle defendant to have indictment dismissed, where defendant was at liberty on bond and did not seek an earlier trial until his motion directed to such issue was filed about 14 months after his arrest, and trial began on day following day on which such motion was heard and denied, and where there was no suggestion that any witnesses died or became unavailable, any prejudice to defendant as to alleged loss of memory on part of himself and his mother concerning alibi defense did not affect outcome, and defendant was identified by six witnesses. *United States v. T. R. Toy* (1973, 482 F. 2d 741, 157 U.S. App. D.C. 152).

Right to speedy trial of defendant, charged with armed robbery, assault with dangerous weapon, and of carrying a pistol without a license, was not impinged by nine-month delay extending from his indictment to his trial where, during the first two months defendant was still at large and police were doing their best to locate him, where defendant did not press a speedy trial right until five months after he was arrested, and where record was sufficient to sustain finding that defendant suffered no prejudice to his defense which could be attributed to the delay at the postarrest stage of the prosecution. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Verdict

In prosecution for armed robbery and for assault with a dangerous weapon, trial court did not erroneously permit jury to return a separate verdict on assault with a dangerous weapon charge, where evidence disclosed that after armed robbery of cash register of store defendant forced victim at gunpoint to walk to rear of store where she was searched and on leaving defendant warned victim about possibility of being shot if she came out before defendant got out of store. *G. W. Bates v. United States* (D.C. App. 1974, 327 A. 2d 542).

Witnesses

Evidence that defendant's sole defense witness had been charged with obstruction of justice for her alleged efforts to persuade complaining witness not to identify codefendant, her brother, should not have been admitted over objection, in prosecution for assault and armed robbery, to impeach witness, where testimony of complaining witness revealed to jury facts which were basis for charge; prejudicial effect of admission of arrest and charge outweighed probative substance. *United States v. C. Maynard* (1973, 476 F. 2d 1170, 155 U.S. App. D.C. 223).

Discretion of trial court to grant pretrial physical or mental examination of prospective witnesses should not be exercised in absence of substantial factual predicate for the same and upon substantial showing of need and justification. *United States v. D. T. Butler* (1971, 325 F. Supp. 886; aff'd 481 F. 2d 531, 156 U.S. App. D.C. 356).

In absence of substantial showing of need and justification, hearing on defense motion for pretrial physical and psychiatric examination of prospective government witnesses would not be continued to allow defendant to subpoena one of the witnesses, despite allegation that such witness had told defense counsel that witness was narcotic addict. *Id.*

§ 22-2902. Attempt to commit robbery.

NOTES TO DECISIONS

Identification

In prosecution for attempted robbery while armed, where complainant, at front door of his apartment building, was accosted by three men who demanded his money and wallet, where he ran across street to seek help, where the three men walked away down the street, where at that moment a police cruiser happened by and complainant reported the incident, where the officers took complainant in the cruiser and made a search of the area, where they decided to search a nearby apartment building but told complainant to remain in the cruiser, where the officers apprehended two men in the building, and where the complainant, because he was afraid to stay in the cruiser alone, came into the building and immediately identified the two men, the on-the-scene confrontation was not so unduly suggestive as to create a substantial likelihood of misidentification. *J. D. Bowler v. United States* (D.C. App. 1974, 322 A.2d 281).

Knowledge on part of an eyewitness that persons on trial were arrested for crime may be taken into account where there is other indication of suggestivity, but mere fact that suspects are included within lineup and that witnesses know or assume this to be the case is an inescapable aspect of lineup identification procedure and does not, without more, provide reason for exclusion of pretrial and in-court identifications. *United States v. C. L. Pearson* (1973, 478 F. 2d 659, 155 U.S. App. D.C. 455).

Pretrial and in-court identifications of defendant by eyewitness to crime were not subject to exclusion by reason of fact that investigating officer told witness at lineup that she had "done well," where there was no

reason to suppose that officer's remark was more than a comforting gesture to witness, who was, quite naturally, on edge, and jury had before it testimony as to (slightly more tentative) lineup identification and was likely to credit this, which was uninfluenced by subsequent remark, far more than taken for granted in-court identification. *Id.*

Severance

In order to assert that statement admissible solely against codefendants prejudicially implicated defendant, he must establish that statement admissible against codefendants directly implicated him, that statement was made by one whose interest was adversely affected and who was not government informant, and that statement itself was as powerfully incriminating as a confession, and there must be no independent evidence of guilt. *M. Brabham v. United States* (D.C. App. 1974, 326 A. 2d 254; cert. denied 95 S. Ct. 1993, 421 U.S. 989).

Admission of hearsay statement of codefendant that he, defendant and others were going to kill prosecution witness, did not so prejudicially affect defendant as to justify severance of his case. *Id.*

Chapter 31.—TRESPASS—INJURIES TO PROPERTY

§ 22-3101. Forcible entry and detainer.

NOTES TO DECISIONS

Construction

Neither the unlawful entry statute nor the forcible entry statute engrafts any additional elements on first-degree burglary statute of the District of Columbia; unlawful entry statute does not purport to amend burglary statutes and does not do so by operation of law, expressly or impliedly, nor do requirements of unlawful entry statute constitute additional elements of every second-degree burglary. *United States v. S. Kearney, Jr.* (1974, 498 F. 2d 61, 162 U.S. App. D.C. 110).

Elements of offense

While burglary does not include elements of breaking or force, offense of forcible entry does. *United States v. T. Melton, Jr.* (1973, 491 F.2d 45, 160 U.S. App. D.C. 252).

Remand

Jury's verdict, finding defendant guilty of first-degree burglary which could not stand because of lack of proof of intent to commit crime in premises, would not be taken as indicating that jury found all elements asserting to conclude that he had committed a forcible entry and therefore Court of Appeals could not authorize on remand a judgment of conviction of forcible entry even though evidence was presented at trial from which jury might have concluded that defendant had committed that offense, it was open to government to decline the unlawful entry conviction on remand and to seek instead to indict and prosecute for forcible entry. *United States v. T. Melton, Jr.* (1973, 491 F. 2d 45, 160 U.S. App. D.C. 252).

§ 22-3102. Unlawful entry on property.

CROSS REFERENCE

Burglary, see § 22-1801.

NOTES TO DECISIONS

Assistance of counsel

Motion to withdraw as counsel on appeal asserting that trial counsel failed for nontactical reasons to request severance of counts of destroying property after trial court granted motion for judgment of acquittal on one count and denied motion as to second count did not raise question of professional incompetence; issue on appeal could be treated in terms of whether a new trial should have been granted. *W. J. Angarano v. United States* (D.C. App. 1973, 312 A. 2d 295; reconsideration denied 329 A. 2d 453).

Constitutional rights

Role played by District of Columbia police officer in informing hotel security personnel of defendant's criminal record prior to time hotel ordered defendant not to return is not sufficient to convert the private action of hotel in barring defendant therefrom into essentially a governmental act, even assuming that an opposite con-

clusion would affect result in prosecution for unlawful entry. *M. C. Kelly v. United States* (D.C. App. 1975, 348 A.2d 884).

Construction

Neither the unlawful entry statute nor the forcible entry statute engrafts any additional elements on first-degree burglary statute of the District of Columbia; unlawful entry statute does not purport to amend burglary statutes and does not do so by operation of law, expressly or impliedly, nor do requirements of unlawful entry statute constitute additional elements of every second-degree burglary. *United States v. S. Kearney, Jr.* (1974, 498 F.2d 61, 162 U.S. App. D.C. 110).

Cross-examination

In prosecution for unlawful entry and assault with deadly weapon, trial court did not improperly limit defendant's attempts to cross-examine government witnesses as to their possible desire to protect their employer from civil suit. *J. F. Hyman v. United States* (D.C. App. 1975, 342 A.2d 43).

Elements of offense

Element that distinguishes burglary from unlawful entry is the intent to commit crime once unlawful entry has been accomplished. *United States v. T. Melton, Jr.* (1973, 491 F.2d 45, 160 U.S. App. D.C. 252).

Hotels

Where party who is not a guest in hotel was warned not to return to hotel and is subsequently found in the hotel, her subsequent entrance into hotel constitutes unlawful entry. *M. C. Kelly v. United States* (D.C. App. 1975, 348 A.2d 884).

Instructions

In prosecution based on defendants' unconsented entry into offices of chemical company and their destruction of certain property in it, instruction that Vietnam war was not issue in case and that, if government proved beyond reasonable doubt that one or more of defendants committed elements of crimes charged, law does not recognize as defense that defendants were motivated to commit their acts by sincere political, religious or moral convictions or in obedience to some higher law was not improper despite contention that instructions were coercive, tantamount to directed verdict of guilty and outside proper scope of judicial instruction. *United States v. M. R. Dougherty* (1972, 473 F.2d 1113, 154 U.S. App. D.C. 76).

Lawful arrest

When restaurant patron, in presence of police officer, refused to leave on demand of restaurant manager for her shoeless condition, officer was justified in arresting patron for violation of unlawful entry statute. *S. M. Feldt v. Marriott Corporation* (D.C. App. 1974, 322 A.2d 913).

Lesser included offense

Whether unlawful entry is lesser included offense with respect to any particular crime that is charged depends not solely upon comparison of statutory requirements for respective crimes but also upon analysis of facts of offense as charged in each indictment and as proved at trial. *United States v. S. Kearney, Jr.* (1974, 498 F.2d 61, 162 U.S. App. D.C. 110).

Plea of guilty

Where defendant charged with first-degree burglary tendered plea of guilty to lesser-included offense of unlawful entry, and trial judge was presented with a factual basis for the plea, plea should not have been refused simply because defendant refused to accompany his plea with an admission of guilt. *United States v. T. Gaskins* (1973, 485 F.2d 1046, 158 U.S. App. D.C. 267).

Prosecutor's comments

Where, although issue of witness' credibility was salient, Government's evidence was strong, objection to improper argument was promptly made and statement stricken, and only one such statement was made over entire course of prosecutor's closing and rebuttal arguments, no prejudicial error occurred when prosecutor told jury that it could fairly conclude that defendant "almost appeared irrational" on stand. *J. F. Hyman v. United States* (D.C. App. 1975, 342 A.2d 43).

Remand

Where defendant's first-degree burglary conviction had to be set aside for lack of proof of intent to commit crime in premises entered but jury necessarily found facts required for conviction of lesser included offense of unlawful entry and the evidence was sufficient to support this determination, Court of Appeals would remand case with instructions to enter, if government consents, judgment of conviction of unlawful entry or, if court believes it in interest of justice, to grant new trial on lesser offense. *United States v. T. Melton, Jr.* (1973, 491 F.2d 45, 160 U.S. App. D.C. 252).

Jury's verdict, finding defendant guilty of first-degree burglary which could not stand because of lack of proof of intent to commit crime in premises, would not be taken as indicating that jury found all elements asserting to conclude that he had committed a forcible entry and therefore Court of Appeals could not authorize on remand a judgment of conviction of forcible entry even though evidence was presented at trial from which jury might have concluded that defendant had committed that offense, it was open to government to decline the unlawful entry conviction on remand and to seek instead to indict and prosecute for forcible entry. *Id.*

Restaurant patron

Under unlawful entry statute, one who lawfully enters may be guilty of a misdemeanor by refusing to leave after being ordered to do so by the person lawfully in charge of the premises. *S. M. Feldt v. Marriott Corporation* (D.C. App. 1974, 322 A.2d 913).

§ 22-3117. Tapping or injuring water-pipes—Tampering with water meters.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 32.—WEAPONS

§ 22-3202. Committing crime when armed—Added punishment.

NOTES TO DECISIONS

Aider and abettor

An aider and abettor of an armed robbery is not guilty of a lesser included offense but is a principal to the robbery. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A.2d 587).

Assistance of counsel

Even if pretrial identifications which resulted from one lineup and one two-man showup were improper, defendant was not denied effective assistance of counsel because of counsel's failure to move, pretrial, for suppression of the identifications where there was abundant evidence of sources independent of those pretrial identifications to support the in-court identifications. *S. S. Shelton v. United States* (D.C. App. 1974, 323 A.2d 717).

Where an attorney has represented a convicted defendant at trial and, as defendant's attorney on appeal, concludes in good faith that a legitimate issue exists as to the constitutional adequacy of his representation of the defendant at trial, it is the duty of the attorney to move to withdraw as counsel on appeal. *Id.*

Confessions

Police officer's embellishment of Miranda warning with statement that, if defendant could not afford an attorney one would be appointed in court the next day, was only one factor to be considered in determining whether defendant's subsequent confession was made after a knowing, intelligent, and voluntary waiver of his rights, and trial court erred in ruling that said embellishment necessarily rendered confession inadmissible. *United States v. J. Rawls* (D.C. App. 1974, 322 A.2d 903).

Notwithstanding defendant's contention that the trial court erred in failing to suppress his alleged confession where it was uncontroverted that he had made known his wish and intention to consult with an attorney, but

where the Government had, nevertheless, continued to interrogate him in the absence of an attorney and eventually elicited the confession, the record showed, in support of conclusion that defendant waived his right to the presence of an attorney, that defendant simply indicated he was "undecided" about an attorney and then decided to go ahead and give a statement. *United States v. W. H. Howard* (1972, 470 F. 2d 406, 152 U.S. App. D.C. 258).

Constitutionality

This section is not unconstitutional because it divests the trial court of discretion concerning duration of punishment or the granting of probation. *United States v. J. Bridgeman* (1975, 523 F. 2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, — U.S. —).

Statute withholding benefits of Youth Corrections Act from those twice convicted of armed crimes of violence is not unreasonable and did not deny youth twice convicted of crimes of violence equal protection of laws. *United States v. E. C. Thomas* (1973, 485 F. 2d 1012, 158 U.S. App. D.C. 233).

Construction

This section does not require that the second crime occur after sentence is adjudged in the prior crime of violence; defendant who was sentenced for second crime after he had been convicted of prior crime came within purview of this section even though sentence on the first conviction was not adjudged until after the second crime was committed. *United States v. J. Bridgeman* (1975, 523 F. 2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, — U.S. —).

When Congress in 1967 amended the District of Columbia Code provision relating to armed robbery, providing a higher penalty for robberies in the District than had been provided since 1948 for federal mail robbery, it intended to provide the sentencing judge with discretion in determining the penalty in a combined prosecution for both offenses; what is impermissible is not the joinder of both for trial but the joinder of judgments, even with concurrent sentences. *United States v. A. B. Knight* (1974, 509 F. 2d 354, 166 U.S. App. D.C. 21).

Dangerous or deadly weapon

Under this section providing for punishment of one who commits crime of violence while "armed with or having readily available any pistol or firearm (or imitation thereof) or other dangerous or deadly weapon," an "imitation" or blank pistol is a "dangerous or deadly weapon." *K. Meredith v. United States* (D.C. App. 1975, 343 A. 2d 317).

Double jeopardy

Where the same sovereignty is involved, the double jeopardy principle bars multiple prosecutions for the same offense by different elements of that sovereignty, and under that principle, multiple prosecutions by the District of Columbia and the United States are barred. *United States v. A. B. Knight* (1974, 509 F. 2d 354, 166 U.S. App. D.C. 21).

If anything, the federal mail robbery statute contemplates a single conviction, not multiple convictions, when the first tier of mail robbery is aggravated by the use of a deadly weapon. *Id.*

Fact that mistrial was declared in first prosecution of defendant for armed robbery would not, under the doctrine of collateral estoppel, preclude his conviction on one count of armed robbery in second prosecution, where jury in the first trial had made no findings, so that defendant's presence as one of the robbers was not inconsistent with these results. *United States v. R. N. Perry* (1974, 504 F. 2d 180, 164 U.S. App. D.C. 111).

Evidence—Admissibility

In prosecution on several counts arising from the robbery of a mail truck, the admission in evidence of a .38-caliber pistol was proper, where a government witness testified that the pistol belonged to one of the defendants and was carried by him during the robbery. *United States v. A. B. Knight* (1974, 509 F. 2d 354, 166 U.S. App. D.C. 21).

Even if, in prosecution on several counts arising from the robbery of a mail truck it was improper to admit in evidence a rifle and ammunition, whose only apparent connection with the crime charged was that they may have been purchased with the proceeds of the robbery,

the error was harmless beyond a reasonable doubt, since there was no danger that the evidence was inflammatory and since independent evidence of the guilt of the defendant in whose apartment the rifle and ammunition was found was overwhelming. *Id.*

In prosecution for armed robbery, sawed-off shotgun seized at time of arrest was admissible where there was evidence as to resemblance of exhibit and gun used at scene of offense and trial judge commented that the gun could not be introduced as the gun used in the crime and that the question was for jury to determine. *United States v. T. McKinley* (1973, 485 F. 2d 1059, 158 U.S. App. D.C. 280).

Testimony that defendants had changed their appearance was admissible to provide basis for jury inference concerning reason that witnesses were unable to identify defendants in court. *Id.*

Court ordered lineup forms instructing each defendant not to alter his appearance prior to lineup were admissible even absent evidence that defendants had actually received notice of the orders where there was no testimony that orders had not been served or that defendants had not been informed of the provisions of the orders; prosecutor was entitled to proceed on presumption that court orders were in fact served, without adducing proof of such service. *Id.*

Testimony by police officer that he had overheard defendant threatening a witness with respect to witness' identification of him as the perpetrator of the crime and telling witness that she had been a fool to allow the policeman to trick her into identifying the defendant was admissible as evidence of an admission directly relevant to guilt and was not rendered inadmissible by the fact that it also contained evidence of another crime—obstruction of justice. *J. N. Smith v. United States* (D.C. App. 1973, 312 A. 2d 781).

— Good character

Prosecutor cannot offer bad character evidence unless accused first introduces evidence of good character, and even then prosecutor's proof is restricted to community reputation and to trait and traits to which accused's own character evidence related. *United States v. J. A. Lewis* (1973, 482 F. 2d 632, 157 U.S. App. D.C. 43).

When character witness, either for accused or for prosecution, is offered, he is subject to cross-examination as to his testimonial qualifications just like any other witness, and probe on cross-examination may extend to those matters, among others, which legitimately affect witness' knowledge of accused's community reputation for the character trait or traits which he confirms. *Id.*

Where at time judge ruled, during second trial for armed robbery and related offenses, that if defense put on good character witnesses then prosecution could cross-examine such witnesses to determine, if they were aware of defendant's arrest for narcotics two weeks before commencement of second trial but ten months after the occurrence of offenses for which he was being tried, judge did not know whether witness would speak to reputation for peace and good order or as to reputation for truth and veracity, trial judge did not have essential information and ruling was error, but in view of government's case error was not prejudicial. *Id.*

— Polygraph tests

Expert testimony based on results of defendant's polygraph examination was inadmissible. *United States v. E. Zeiger* (1972, 475 F. 2d 1280, 155 U.S. App. D.C. 11; rev'g 350 F. Supp. 685).

— Sufficiency

Testimony by prison guards that they were locked in a cell and held as hostages, that defendant frequently checked the cell where the guards were confined, that he told the guards that he "had nothing to lose by going out looking," that defendant separated himself from a group of inmates who did not want to escape immediately before rebellious inmates clustered for breakout attempt, and that defendant thereafter came by the cell many times armed with a short piece of steel with a sharp end and threatened the hostages was sufficient to sustain defendant's convictions for attempted escape, armed kidnapping, robbery, and riot. *United States v. J. Bridgeman* (1975, 523 F. 2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Ct. 1743, 1744, — U.S. —).

In prosecution for commission of crime of violence while armed with a dangerous or deadly weapon, it is not required that Government prove that gun used in an armed offense was loaded or operable, and testimony that object which appeared to be gun was involved is sufficient to show use of dangerous weapon. *K. Meredith v. United States* (D.C. App. 1975, 343 A. 2d 317).

Evidence was sufficient to establish requisite intent to support conviction of assault with intent to kill of defendant, who shot victim from a distance of six feet. *United States v. T. L. Robertson* (1974, 507 F. 2d 1148, 165 U.S. App. D.C. 325).

Evidence, including the testimony of an eyewitness involving all three defendants in the assault upon victim, was sufficient to support verdict of jury finding defendants guilty of felony-murder and assault with intent to commit rape while armed. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Evidence that victim had \$231 in his pocket and was carrying four or five packages when he was confronted by two men who held gun on him and went through his pockets and that victim told policemen that he had been robbed was insufficient to support armed robbery conviction. *United States v. C. McGill* (1973, 487 F. 2d 1208, 159 U.S. App. D.C. 337).

Evidence was sufficient to support convictions of assault with intent to kill while armed. *United States v. J. Hill* (1972, 470 F. 2d 361, 152 U.S. App. D.C. 213).

Identification

Identification procedures were not so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification though officer told witness that photo of suspect was included in photographic array, where in photographic identification, robbery victim chose two photographs of men whom he thought resembled the robber, one of which was defendant, and in subsequent lineup, robbery victim failed to identify defendant at all. *G. S. Crawley v. United States* (D.C. App. 1974, 328 A. 2d 777).

In prosecution for attempted robbery while armed, where complainant, at front door of his apartment building, was accosted by three men who demanded his money and wallet, where he ran across street to seek help, where the three men walked away down the street, where at that moment a police cruiser happened by and complainant reported the incident, where the officers took complainant in the cruiser and made a search of the area, where they decided to search a nearby apartment building but told complainant to remain in the cruiser, where the officers apprehended two men in the building, and where the complainant, because he was afraid to stay in the cruiser alone, came into the building and immediately identified the two men, the on-the-scene confrontation was not so unduly suggestive as to create a substantial likelihood of misidentification. *J. D. Bowler v. United States* (D.C. App. 1974, 322 A.2d 281).

Lineup

Where defendant was lawfully in custody, police were authorized to place him in lineup in connection with unrelated offense. *United States v. J. F. Anderson* (1974, 490 F.2d 785, 160 U.S. App. D.C. 217).

Where defendant had been lawfully arrested for assault with intent to commit robbery while armed and was in custody or on bond, no court order was required before he could be viewed at lineup by victims of prior robbery, as long as presentment before magistrate was without undue delay and presence of counsel at lineup was assured. *United States v. J. F. Anderson* (1972, 352 F. Supp. 33).

Where a suspect arrested for one offense is to be viewed by witnesses to other offenses, there need be no Government disclosure or prior judicial determination of any kind concerning whether the suspect will be required to stand in a lineup, the number of witnesses who will view the lineup, the dates, times, places, nature, number or similarity of the offenses for which the suspect will be viewed, or the conditions under which the lineup will be held. *Id.*

Indictment

Under this section providing punishment of one who commits crime of violence while armed with or having

readily available any pistol or firearm (or imitation thereof) or other dangerous or deadly weapon, critical added element is that crime is committed by one armed with dangerous or deadly weapon, and list of weapons merely catalogues ways in which offense may be committed; such specific facts need not be included in indictment, and when they are included, they are surplusage. *K. Meredith v. United States* (D.C. App. 1975, 343 A. 2d 317).

Inferences

Jury may infer from change in appearance by someone who has been called to appear in a lineup that change reflects an awareness of guilt and fear of identification. *United States v. T. McKinley* (1973, 485 F. 2d 1059, 158 U.S. App. D.C. 280).

Inference that, since defendant has violated the law in one respect, he is likely to have violated the law defining the offense charged in the indictment is not permitted lightly, except as to certain defined categories. *Id.*

Instructions

Trial court properly instructed jury on testimony of accomplices rather than testimony of informers with respect to testimony of witness who had pled guilty to one count of indictment under which he and defendant were charged on the day before defendant's trial and who had participated in the crime with defendant. *United States v. M. W. Thorne* (1975, 527 F. 2d 840, — U.S. App. D.C. —).

Where indictment charged defendant with robbery while armed with a dangerous weapon, and proof adduced at trial showed that he was so armed, court's instruction that defendant could be convicted if jury found that he was armed with any pistol or firearm or imitation thereof was not objectionable as amending indictment but merely explained charges contained therein more fully than did indictment itself and, absent any claim of prejudice by claimed variance, instruction is not erroneous. *K. Meredith v. United States* (D.C. App. 1975, 343 A. 2d 317).

In view of fact that evidence of plea of guilty to charge other than that on which defendant was being tried was not highly prejudicial, and where defendant did not request "immediate cautionary instruction" and instructions to jury constituted very fair charge with respect to use of prior conviction and evidence concerning defendant's involvement with narcotics, fact that immediate cautionary instruction was not given was not ground for relief. *United States v. H. E. Lee* (1974, 509 F. 2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

Where jury had commenced its deliberations in prosecution for armed robbery, assault with a dangerous weapon, receiving stolen property, and carrying a pistol without a license, when it presented to the court a question concerning the armed robbery count, the court did not abuse its discretion by giving, in the face of defendant's objection but in the absence of a request to present argument, a supplemental instruction on aiding and abetting. *R. W. Atkinson v. United States* (D.C. App. 1974, 322 A.2d 587).

"Model instruction" on mistaken identity was adequate with respect to identification testimony in case in which clerks of robbed store identified another as the armed robber at police lineup. *United States v. E. C. Thomas* (1973, 485 F. 2d 1012, 158 U.S. App. D.C. 233).

Where police officer, testifying in trial of defendants charged with armed robbery, admitted that he had previously testified under oath that there was only one witness to the crime, when he knew that there were two witnesses, and where police officer stated that he so testified in order to protect the second witness, it was not error for court, after instructing jury of the need to scrutinize with care the testimony of a witness who has previously lied under oath, to tell the jury it could take into consideration the reasons for the person's having previously lied. *J. N. Smith v. United States* (D.C. App. 1973, 312 A. 2d 781).

Intent

Assault with intent to kill while armed is a crime requiring specific intent. *United States v. G. A. Martin* (1973, 475 F. 2d 943, 154 U.S. App. D.C. 359).

In light of instructions as whole, erroneous instruction to effect that jury must find beyond reasonable doubt

that defendant if he performed acts giving rise to charge of assault with intent to kill was in such a mental state that he was not capable of forming specific intent in question was harmless. *Id.*

Once defense of intoxication is interposed in prosecution on charge of assault with intent to kill while armed, burden rests with prosecution to establish that at time offense was committed defendant had capacity to form requisite specific intent. *Id.*

Jencks Act

It was error for trial court not to conduct inquiry into nature of notes taken by prosecutor when interviewing witness before determining that the notes were, as contended by prosecutor, not substantially verbatim and thus not required to be produced for defendant. *G. J. Matthews v. United States* (D.C. App. 1974, 322 A.2d 908).

It was error for trial court not to determine whether certain police forms and radio runs, which contained initial description of robber given to police by witness and which related to robberies in which defendant, who was charged with robbery, was believed to be a suspect and to which witness who was identifying defendant in the instant case had also been an eyewitness, were producible under the Jencks Act. *Id.*

Joinder

Review of record showed that the similarity of circumstances surrounding the two criminal episodes on which charges of rape while armed and armed robbery were based were sufficiently remarkable to prove that there was a reasonable probability that the same person committed the crimes and there was no prejudice in the joinder of both crimes in one trial. *United States v. R. E. Adams, Jr.* (1973, 481 F. 2d 1099, 156 U.S. App. D.C. 415).

In view of fact that scene of armed robbery and assaults of January 17 was different from that of armed robbery and assault on January 11 and assaults on January 16, the victims were different, and only common factor was that in each case the offender was a man wearing a fur coat and fur hat, and that there was no evidence of a common scheme or plan embracing commission of all of the offenses, it was prejudicial error to join trial of charges relating to offenses on January 17 with trial on other counts alleging offenses on January 11 and January 16, notwithstanding Government's contention that evidence of each offense was simple and distinct so that jury could not possibly have been confused. *United States v. T. E. Carter* (1973, 475 F. 2d 349, 154 U.S. App. D.C. 238).

Jurisdiction

Armed kidnapping charges brought against prisoner in District of Columbia jail as result of riot and attempted escape were properly tried by federal court in the District of Columbia, as were charges of conspiracy and attempted escape from federal custody arising out of the same incident, so that this section, providing minimum sentence for certain second offenders, properly applied. *United States v. J. Bridgeman* (1975, 523 F. 2d 1099, 173 U.S. App. D.C. 150; cert. denied 96 S. Cert. 1743, 1744, — U.S. —).

Lesser included offense

Where armed assault was essential part of proof establishing armed rape, armed assault was lesser offense included within the armed rape, and assault conviction was vacated. *United States v. E. Edmonds, Jr.* (1975, 524 F. 2d 62, 173 U.S. App. D.C. 241).

Assault with dangerous weapon on motel clerk was lesser included offense of armed robbery of same person, and conviction of former could not stand as conviction for another offense. *United States v. H. E. Lee* (1974, 509 F. 2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

It was improper to convict defendant both for assault with a dangerous weapon and armed robbery where the assault was a necessary part of the evidence needed to support the count of armed robbery. *R. Taylor v. United States* (D.C. App. 1974, 324 A.2d 683).

Counts of assault with a dangerous weapon were lesser included offenses of offenses of assault with attempt to commit robbery and armed robbery and, therefore, defendant could not be convicted of the former offenses in addition to the latter. *E. Quick v. United States* (D.C. App. 1974, 316 A.2d 875).

Assault with dangerous weapon was lesser included offense of armed robbery; thus, defendants could not be convicted of both three counts of armed robbery and three counts of assault with a deadly weapon and convictions of assault would be reversed. *United States v. T. McKinley* (1973, 485 F. 2d 1059, 158 U.S. App. D.C. 280).

Offense of assault with dangerous weapon is included in armed robbery; thus defendant should not have been sentenced to concurrent terms of five to 15 years on counts charging armed robbery and to terms of three to ten years on counts charging assault with dangerous weapon and the sentences imposed for assault with dangerous weapon must be vacated. *United States v. E. C. Thomas* (1973, 485 F. 2d 1012, 158 U.S. App. D.C. 233).

Under District of Columbia statute assault with a dangerous weapon is a lesser included offense of robbery while armed. *United States v. J. Johnson* (1973, 475 F. 2d 1297, 155 U.S. App. D.C. 28).

Where jury returned a verdict of guilty on each of four counts of robbery while armed involving different victims it was error to receive verdicts from the jury on the four counts of assault with a dangerous weapon, a lesser included offense, with respect to the same victims. *Id.*

Mental capacity

Record, including testimony of a private psychiatrist who examined defendant at government expense, was sufficient to support finding that criminal acts committed by defendant (armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon) were not so proximately tied to defendant's mental impairment as to require his exculpation. *United States v. G. A. Wilson* (1972, 471 F. 2d 1072, 153 U.S. App. D.C. 104; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Merger of offenses

Where assault with dangerous weapon offense was submitted to jury on specific instruction that it could convict on assault with dangerous weapon charge only if it found that separate and apart from pointing the gun at complaining witness, the complaining witness was beaten with the gun, and jury returned verdict of guilty, assault with dangerous weapon was not a lesser included offense within the armed robbery, offenses did not merge, and punishment for both did not constitute cumulative punishment. *C. M. Dixon, Jr. v. United States* (D.C. App. 1974, 320 A.2d 318).

Convictions of assault with a dangerous weapon merged with armed robbery convictions connected with same robbery of drugstore and would thus be set aside. *United States v. T. R. Toy* (1973, 482 F. 2d 741, 157 U.S. App. D.C. 152).

Where armed robberies and assaults with a dangerous weapon were committed against same persons, latter offenses merged into former, and convictions on assault charges could not stand, though a remand for resentencing was not required where defendant had been given separate sentences, and all sentences were set to run concurrently. *United States v. A. Holiday* (1973, 482 F. 2d 729, 157 U.S. App. D.C. 140).

Where charges of assault with intent to commit rape while armed and charges of assault with a dangerous weapon arose from the same act or transaction, the latter charge, requiring proof of two of the three elements constituting former offense, merged with and became a lesser offense to the charge of assault with intent to commit rape while armed, barring conviction on the lesser offense. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

A count charging assault with a dangerous weapon is merged with a count charging armed robbery. *J. N. Smith v. United States* (D.C. App. 1973, 312 A. 2d 781).

In view of concurrent sentences imposed upon convictions for assault with intent to kill while armed and assault with a dangerous weapon, the mildness of the punishment adjudged, the trial judge's recommendation for psychiatric treatment and the necessity for conserving judicial resources, the Court of Appeals would not reach question as to whether the crime of assault with dangerous weapon merged into crime of assault with intent to kill while armed with a dangerous weapon, but would vacate the convictions on the four counts which charged assault with a dangerous weapon. *United States v. J. Hill* (1972, 470 F. 2d 361, 152 U.S. App. D.C. 213).

Miranda rights—Waiver

In armed robbery prosecution, in which it could have been inferred, from evidence that defendant was unwilling to have his statements recorded in writing that defendant had mistakenly assumed that only written statements could be used against him, Government sustained its burden of establishing a knowing waiver by defendant of his right to independent legal assistance after his arrest. *United States v. E. R. Frazier* (1973, 476 F. 2d 891, 155 U.S. App. D.C. 135).

It was not for police officer to place legal interpretation on language of Miranda warnings he was directed to give and to continue or suspend interview in accordance with what that interpretation might be, and even though it could be inferred from defendant's unwillingness to have his statements recorded in writing that he mistakenly assumed that only written statements could be used against him, allowing defendant to pursue his evident desire to keep on talking was neither an unreasonable nor a deceptive tactic on police officer's part which deprived defendant of due process; especially where defendant had already confessed his most serious crime before note-taking episode occurred. *Id.*

New trial

Defendant, who had been convicted of assault with intent to commit robbery and armed robbery, was not entitled to new trial on ground of newly discovered evidence consisting of his posttrial information that an attempt had been made on his life by the "real" robber, whom defendant and another witness could identify, and that defendant had not given his attorney the information prior to trial because of fear for his life, as defendant had been apprehended on strength of positive identifications it was unlikely that the additional testimony, which would merely have been cumulative of defense of innocent presence, would have produced a different result. *E. Quick v. United States* (D.C. App. 1974, 316 A.2d 875).

Prearrest delay

Record was devoid of any indication that delay in arresting defendant, which occurred ten months after date of the offenses, was the product of any deliberate effort by police to gain an advantage, record furnished abundant evidentiary support for finding that a reasonable endeavor was made to locate defendant and, in addition, record sustained additional finding that, in any event, defendant was not harmed by the delay, in prosecution for armed robbery, assault with a dangerous weapon, and for carrying a pistol without a license. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Prosecutor's comments

Comments of prosecutor during assault trial to the effect, inter alia, that missing witness was too scared to come and testify, that defendants were killers and were dressed like gangsters, that one defendant was a "young buck," that guilty verdict would be a matter of achievement and courage, and that presumption of innocence might not apply as much to defendants as it might to others in less serious cases did not rise to the level of substantial prejudice necessary for reversal, in light of the strength of the Government's case and correcting instructions by the trial court. *R. L. Smith v. United States* (D.C. App. 1974, 315 A.2d 163; cert. denied 95 S.Ct. 174, 419 U.S. 896).

Prosecutor's closing and rebuttal arguments which referred to defenses of insanity interposed by famous defendants in other cases and to actions of Hitler and Napoleon were improper and were so highly prejudicial as to require reversal. *United States v. W. E. Hawkins* (1973, 480 F. 2d 1151, 156 U.S. App. D.C. 259).

Where prosecutor's improper closing and rebuttal arguments were so highly prejudicial as to require reversal of conviction of defendant who relied upon insanity as a defense and was convicted of first-degree murder and assault with intent to kill while armed, judgment of conviction of codefendant, who was charged as an aider and abettor, asserted lack of intent to commit murder, and was convicted of second-degree murder, would also be nullified. *Id.*

Retrial, lesser included offense

Where the evidentiary failure relating to charge of second-degree burglary while armed with Molotov cocktail concerned only circumstance of defendant being armed, retrial of defendant, mandated on other grounds, could properly include lesser charge of second-degree burglary. *United States v. L. S. Carter* (1975, 522 F. 2d 666, 173 U.S. App. D.C. 54).

Search and seizure

Where defendant's car fit description given by accomplice and another witness and was found in vicinity of defendant who met description given by the accomplice, and where defendant voluntarily surrendered his keys to police and they fit car, tying car to evidence of its use, there was probable cause for seizure of the car, and police could either seize and hold car or make immediate warrantless search, and where it was difficult to make detailed search of car where it was found, subsequent search at station house, 24 hours later, was reasonable; police had duty to act as quickly as possible to obtain evidence that might exonerate or incriminate, and there were thus exigent circumstances. *United States v. H. E. Lee* (1974, 509 F. 2d 400, 166 U.S. App. D.C. 67; cert. denied 95 S. Ct. 1451, 420 U.S. 1006).

Sentence

Although a violation of the District of Columbia armed robbery statutes and a violation of the federal mail robbery statute require different elements of proof, and although, in the instant case, concurrent sentences were imposed, the conviction of defendants on both charges, arising from a single transaction, was improper, necessitating remand to the trial court with instructions to vacate the judgment on one of the counts and to resentence on the other count. *United States v. A. B. Knight* (1974, 509 F. 2d 354, 166 U.S. App. D.C. 21).

Under statute precluding sentencing accused under Youth Corrections Act if he is convicted more than once of having committed crimes of violence, conviction occurring before effective date of statute is included. *United States v. E. C. Thomas* (1973, 485 F. 2d 1012, 158 U.S. App. D.C. 233).

Defendant who was convicted of armed robbery and sentenced under Youth Corrections Act, before effective date of statute precluding sentencing under the Act of any person who is convicted more than once of having committed a crime of violence in District of Columbia, and who was convicted thereafter of armed robbery and assault with a dangerous weapon was not entitled to be sentenced under the Youth Corrections Act, although he was 20 years old at time of second conviction. *Id.*

Severance

Where admission of evidence concerning the close relationship between defendant and codefendant was clearly relevant to codefendant's defense of alibi and mistaken identity and there was no conflict in defenses, trial court did not err in refusing to grant defendant a severance. *G. S. Crawley v. United States* (D.C. App. 1974, 328 A. 2d 777).

In prosecution of defendants on murder and rape charges, trial court did not abuse its discretion in denying motion of defendant brothers for a severance from codefendant, who had fatally stabbed the victim, notwithstanding defendants' claim that the evidence against the codefendant was much stronger than the evidence against them. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Speedy trial

Right to speedy trial of defendant, charged with armed robbery, assault with dangerous weapon, and of carrying a pistol without a license, was not impinged by nine-month delay extending from his indictment to his trial where, during the first two months defendant was still at large and police were doing their best to locate him, where defendant did not press a speedy trial right until five months after he was arrested, and where record was sufficient to sustain finding that defendant suffered no prejudice to his defense which could be attributed to the delay at the postarrest stage of the prosecution. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Witnesses

Trial court, which denied a defense motion during trial to have key prosecution witness, who was a chronic alcoholic, subjected to a psychiatric examination with respect to his competency, did not abuse its discretion in refusing to treat the witness as a person of actual or potential incompetency, notwithstanding he claims of defendants, in support of their motion, that the testimony given by the witness was highly confusing and that hospital records indicated he had a clinical history which rendered him wholly unreliable. *United States v. B. J. Heinlein* (1973, 490 F.2d 725, 160 U.S. App. D.C. 157).

Evidence that defendant's sole defense witness had been charged with obstruction of justice for her alleged efforts to persuade complaining witness not to identify codefendant, her brother, should not have been admitted over objection, in prosecution for assault and armed robbery, to impeach witness, where testimony of complaining witness revealed to jury facts which were basis for charge; prejudicial effect of admission of arrest and charge outweighed probative substance. *United States v. C. Maynard* (1973, 476 F. 2d 1170, 155 U.S. App. D.C. 223).

Competency of mentally retarded 18-year-old prosecutrix to testify in prosecution for assault with intent to commit rape while armed, assault with a dangerous weapon and carrying a dangerous weapon, was a threshold question of law committed to the trial court's discretion; it remained for the jury, however, to assess credibility of the witness and the weight to be given her testimony. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

§ 22-3203. Unlawful possession of a pistol.

NOTES TO DECISIONS

Prosecution

Prosecutor had authority to charge the defendant, a felon who possessed an unlicensed pistol while not in his dwelling or on his land, under felony-repeater provisions of § 22-3204 rather than under misdemeanor statute [this section] and by doing so did not deny right to equal protection. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; aff'd 93 S. Ct. 1670, 411 U.S. 389).

§ 22-3204. Carrying concealed weapons.

NOTES TO DECISIONS

Allen charge

Where Allen charge was given after jury which had not been sequestered had deliberated 2 hours and 20 minutes and announced that they had reached a verdict on charge of carrying a dangerous weapon but were deadlocked on charged of assault with deadly weapon and after court took jury verdict of acquittal on carrying charge and where jury deliberated only 25 minutes before returning verdict of guilty on assault charge, Allen charge was not coercive to the point of requiring reversal of conviction. *F. C. Winters v. United States* (D.C. App. 1974, 317 A.2d 530).

Appeal and error

Even though police officer's specific testimony was that defendant had been looking "in the direction of the parked cars," inference drawn by trial court from totality of testimony adduced on motion to suppress is not plainly wrong or without evidence to support it and, accordingly, reviewing court would accept conclusion that defendant had been "looking into parked cars." *R. B. Sanders v. United States* (D.C. App. 1975, 339 A. 2d 373).

Where case against defendant on charges of carrying dangerous weapon was sufficiently proved by other independent evidence, fact that defendant's conviction in same trial on charges of first-degree murder was reversed because of error in trial court in admitting testimony by victim's wife that victim was afraid of being killed by defendant did not require reversal of conviction on weapons charge. *United States v. R. W. Brown* (1973, 490 F.2d 758, 160 U.S. App. D.C. 190).

Where suppression order had been reversed, defendant then waived jury trial and stipulated that officers who had testified at suppression hearing would give same testimony at trial and that defendant did not possess license to carry pistol and case was then submitted without further evidence or argument, same issue and same record was before Court of Appeals on appeal from conviction

of carrying pistol without license as had been before it on appeal from the suppression order and, therefore, appeal from conviction was frivolous and would be dismissed. *W. A. Walker v. United States* (D.C. App. 1973, 304 A. 2d 290; cert. denied 94 S. Ct. 368, 414 U.S. 1007).

Arrest

Should doubt as to correct identity of subject of warrant arise, arresting officer should make immediate, reasonable efforts to confirm or deny applicability of warrant to detained individual, but if, after such reasonable efforts, officer reasonably and in good faith believes that suspect is one against whom warrant is outstanding, protective frisk pursuant to arrest of that person is not in contravention of Fourth Amendment. *R. B. Sanders v. United States* (D.C. App. 1975, 339 A. 2d 373).

Evidence that six-month-old warrant which was used to arrest defendant, whose automobile was found to contain a pistol for which defendant did not have a license, was based on the complaint of a citizen, was valid on its face, and was served by an officer who was authorized to serve it and who exercised proper diligence in verifying its legality sustained finding that arrest of defendant was not a mere sham to search defendant's automobile. *R. E. Rippey v. United States* (D.C. App. 1974, 322 A.2d 276).

Burden of proving exception

Defendant charged with carrying pistol without a license had burden of bringing himself within exception provided for person who carries weapon in his dwelling house or on other land possessed by him. *M. Hines v. United States* (D.C. App. 1974, 326 A. 2d 247).

Constitutionality

Recidivist statute was not unconstitutional for permitting reliance on ten-year-old conviction. *L. D. Jones v. United States* (D.C. App. 1973, 299 A. 2d 538).

Construction with other laws

Discernment of legislative intent that there be a single conviction for federal mail or bank robbery, and assaults comprised therein, does not preclude the conviction of a defendant for carrying a dangerous weapon, in violation of the District of Columbia Code. *United States v. A. B. Knight* (509 F. 2d 354, 166 U.S. App. D.C. 21).

Corrections officer

Under statutory provision excepting from prohibition against carrying pistols "jail wardens, or their deputies, policemen or other duly appointed law enforcement officers, or to members of the Army, Navy, or Marine Corps of United States or of the National Guard or Organized Reserves when on duty," corrections officer is not prohibited from carrying pistol whether or not "on duty." *United States v. D. Pritchett, Jr.* (1972, 470 F. 2d 455, 152 U.S. App. D.C. 307).

Dwelling house

For defendant charged with carrying pistol without a license to bring himself within exception provided for person carrying weapon in his own dwelling or on other land possessed by him, defendant was required to show that he had exclusive control and possession of the premises. *M. Hines v. United States* (D.C. App. 1974, 326 A. 2d 247).

Where porch on which defendant and his girl friend struggled over pistol allegedly found by defendant was part of apartment building in which defendant and others lived, defendant was not within exception from pistol licensing requirement provided for person who carries weapon in his dwelling house or on other land possessed by him. *Id.*

Elements of offense

When defendant is charged with carrying a pistol without a license, government must prove that the weapon was operable. *C. C. Anderson v. United States* (D.C. App. 1974, 326 A. 2d 807; cert. denied 95 S. Ct. 1405, 420 U.S. 978).

In view of government's failure to introduce evidence that juvenile lacked valid license to carry a pistol, he should not have been found guilty of carrying a pistol without a license. *In the Matter of W. K.* (D.C. App. 1974, 323 A. 2d 442).

Proof of intent to use a weapon for an unlawful purpose is not an element of offense of carrying a pistol without a license. *F. T. Mitchell v. United States* (D.C. App. 1973, 302 A. 2d 216).

All that is needed to prove violation of statute prohibiting carrying pistol without license is intent to do the proscribed act. *Id.*

Evidence—Admissibility

Permitting police officer to testify regarding direction from which shot causing bullet hole in wall was fired did not constitute an abuse of discretion in prosecution for armed robbery and for carrying a dangerous weapon. *United States v. A. E. Pierson* (1974, 503 F. 2d 173, 164 U.S. App. D.C. 82).

Where police officers, having stopped automobile for red light violation, noted that driver's operator's permit had expired and registration was in name of another and that vehicle number on registration varied by one digit from number found on the automobile, police had legal justification to take temporary custody of the automobile, after ordering that it be driven to police station, and pistol which fell from coat of defendant passenger, ordered to alight from the vehicle, was admissible against him. *United States v. D. J. Ordway* (D.C. App. 1974, 329 A. 2d 776).

Testimony of arresting officer, who apparently lost note on which he jotted down assault victim's description of assailant, was not, in prosecution for carrying a pistol without a license, inadmissible under the Jencks Act, since the Act imposes its sanction on the testimony of the witness who gave the statement rather than on the one who received it; moreover, receipt of the officer's testimony did not constitute plain error in light of his inability to produce the note, since the officer testified that the arrest of defendant was based on victim's on-the-scene identification. *M. W. Hardy v. United States* (D.C. App. 1974, 316 A.2d 867).

Where, in prosecution of defendant for first-degree murder and carrying dangerous weapon, there was no claim of self-defense, suicide, accidental death or any other plausible issue that would justify inquiry into victim's state of mind, court committed prejudicial error in admitting testimony by victim's wife that victim was frightened that he might be killed by defendant. *United States v. R. W. Brown* (1973, 490 F.2d 758, 160 U.S. App. D.C. 190).

Exclusion of arresting officer's testimony that there was no attempt to obtain fingerprints from pistol, which was found protruding from paper bag on passenger's side of transmission hump of defendant's automobile but within reach of the driver, was not error, as denying defendant the possible corroboration of his testimony that a passenger had alighted from vehicle on approach of police, had passenger's prints been found on weapon where defendant never sought to introduce fingerprint matter and did not seek to have Government perform fingerprint analysis or attempt to obtain such analysis himself. *United States v. J. D. Henson* (1973, 486 F. 2d 1292, 159 U.S. App. D.C. 32).

— Erroneous transmission to jury

Inadvertent transmission of photograph exhibit not admitted in evidence to jury at trial of defendant for carrying pistol without license was not prejudicial where photograph was of interior of back entranceway and location of trash can which had been a matter of dispute with regard to codefendant who had been accused of stuffing jacket with gun and narcotics in pockets in trash can and was irrelevant as to defendant's case. *W. N. Quarles v. United States* (D.C. App. 1975, 349 A. 2d 690; cert. denied 96 S. Ct. 2169, — U.S. —).

— Good character

Prosecutor cannot offer bad character evidence unless accused first introduces evidence of good character, and even then prosecutor's proof is restricted to community reputation and to trait and traits to which accused's own character evidence related. *United States v. J. A. Lewis* (1973, 482 F. 2d 632, 157 U.S. App. D.C. 43).

When character witness, either for accused or for prosecution, is offered, he is subject to cross-examination as to his testimonial qualifications just like any other witness, and probe on cross-examination may extend to those matters, among others, which legitimately affect witness' knowledge of accused's community reputation for the character trait or traits which he confirms. *Id.*

Where at time judge ruled, during second trial for armed robbery and related offenses, that if defense put on good character witnesses then prosecution could cross-examine such witnesses to determine if they were aware of defendant's arrest for narcotics two weeks before commencement of second trial but ten months after the occurrence of offenses for which he was being tried, judge did not know whether witness would speak to reputation for peace and good order or as to reputation for truth and veracity, trial judge did not have essential information and ruling was error, but in view of government's case error was not prejudicial. *Id.*

— Polygraph tests

Expert testimony based on results of defendant's polygraph examination was inadmissible. *United States v. E. Zeiger* (1972, 475 F. 2d 1280, 155 U.S. App. D.C. 11; rev'g 350 F. Supp. 685).

— Sufficiency

Evidence that defendant was armed and was threatening one individual with serious bodily injury, that he was aware that he was being followed by uniformed special officer and that defendant turned and shot uniformed officer was sufficient, apart from issue of mental responsibility, to support verdict finding defendant guilty of second-degree murder of the officer and of carrying a dangerous weapon. *United States v. J. Taylor* (1975, 510 F. 2d 1283, 167 U.S. App. D.C. 62; rehearing denied 516 F. 2d 1243, 170 U.S. App. D.C. 315).

Evidence, including testimony of complainant and others concerning incident, reasonably permitted a finding of guilt on charges of armed kidnapping, armed assault with intent to kill, and carrying a dangerous weapon. *R. N. Wooten v. United States* (D.C. App. 1975, 343 A. 2d 281).

Evidence, including fact that searching officer found a pistol on floorboard and between and behind front bucket seats of automobile in which defendant and his companion were riding, was sufficient to sustain conviction of carrying a pistol without a license. *United States v. D. T. McDonald* (1973, 481 F. 2d 513, 156 U.S. App. D.C. 338).

Evidence which was adequate to enable jury to find that the possession of weapons, which were in a car in which defendants were riding, could be knowledgeably attributable to defendants was sufficient to sustain their convictions for possession of unregistered firearms, possession of prohibited weapons and carrying a dangerous weapon. *United States v. J. C. Matthews* (1973, 480 F. 2d 1191, 156 U.S. App. D.C. 299).

Testimony by two police officers that they saw defendant take gun from his belt and replace it, that they saw defendant enter driver's side of a van, subsequently found to be stolen, that they subsequently saw three men standing near the van with defendant closest to it, and testimony by one of the two officers that he saw defendant drop the gun sustained defendant's convictions for unauthorized use of a motor vehicle and carrying a pistol without a license. *D. R. Reed v. United States* (D.C. App. 1973, 312 A. 2d 775).

Evidence sustained conviction of defendant, a passenger in rear seat of car, for carrying without a license a pistol which was found on the passenger side of front seat. *H. B. Johnson v. United States* (D.C. App. 1973, 309 A. 2d 497; cert. denied 94 S. Ct. 1960, 416 U.S. 951).

Notwithstanding defendant's claim that Government had failed to prove essential element of possession of gun at time of offense, evidence sustained conviction of carrying a pistol without a license. *N. Hawkins v. United States* (D.C. App. 1973, 304 A. 2d 279).

Evidence was sufficient to support conviction of carrying a pistol without a license, possessing an unregistered firearm and unlawfully possessing ammunition against defendant who was driving vehicle which had been loaned to him by his employer and had been previously driven by numerous employees and customers of employer, and in glove compartment of which police officer found a pistol. *P. Patterson v. United States and District of Columbia* (D.C. App. 1973, 301 A. 2d 67).

Evidence was sufficient to support conviction as a repeat offender of carrying a pistol without a license against defendant who was pointed out to police officers after officers heard a gunshot and who was found in automobile

which had operable pistol, which had fresh smell of gunpowder and contained five live rounds of ammunition and one expended round, lying on the front seat. *A. Ragland v. United States* (D.C. App. 1973, 299 A. 2d 141).

— Suppression

Where, even according to defendant's testimony at trial, there was no valid issue as to whether police officer had constitutional right to seize gun and arrest defendant for possessing pistol without a license, it was unnecessary to remand for hearing to determine whether defense counsel's failure to assert at trial defendant's right to have been present at suppression hearing was a deliberate choice, in which case the right was forfeited, or was an oversight, in which case failure to cure defect in suppression hearing was rendered harmless to defendant in view of his testimony establishing valid arrest and seizure. *J. E. Poteat v. United States* (D.C. App. 1974, 330 A. 2d 229).

Where both written motion to suppress gun and defendant's trial testimony supported gun's admissibility, defendant could not argue that his presence at suppression hearing was required to aid counsel in cross-examination regardless of whether he would also testify. *Id.*

Fingerprint tests, duty to make

Government's failure to perform fingerprint analysis on pistol found in paper bag on passenger's side of transmission hump of defendant's automobile and within reach of driver could not be found to have denied defendant due process by keeping from defendant, who police officers said was alone in vehicle at time of arrest but who asserted that a passenger had alighted on approach of police, evidence material to guilt where defendant never sought to introduce fingerprint matter at trial and did not seek to have Government perform a fingerprint analysis or attempt to obtain such analysis himself. *United States v. J. D. Henson* (1973, 486 F. 2d 1292, 159 U.S. App. D.C. 32).

Frisk

Where police saw defendant pull to the curb in rented automobile, get out and begin walking down street, where one officer recognized defendant and also remembered that, about two weeks earlier, at a roll call, he had heard an announcement that there was a warrant for defendant's arrest for unauthorized use of a motor vehicle, where the officers drove up to defendant and questioned him about the vehicle, where defendant suggested that they drive him back to his automobile and he would show them the rental contract, and where the officers, as defendant was about to enter the patrol car, frisked him and discovered he was carrying a pistol without a license, the frisk could not, in view of the government's failure to establish the existence of a validly issued arrest warrant, be justified as incidental to a lawful arrest. *I. Gilchrist v. United States* (D.C. App. 1973, 300 A. 2d 453).

Harmless error

In prosecution for carrying pistol without a license, any error resulting from testimony indicating that pistol in question was owned by one other than defendant was harmless where trial judge immediately cautioned jury that defendant was not charged with stealing pistol but only with possession of it without a license. *C. C. Anderson v. United States* (D.C. App. 1974, 326 A. 2d 807; cert. denied 95 S. Ct. 1405, 420 U.S. 978).

In light of adoption of preponderance standard for determining voluntariness of a confession, any error in admitting defendant's statement while entertaining a reasonable doubt about voluntariness was at best harmless error which the Court of Appeals was required to ignore. *N. Hawkins v. United States* (D.C. App. 1973, 304 A. 2d 279).

Identification

Identification procedure whereby occupants of car were returned in police van to site of gunshots where witness identified defendant from five persons in van, without any assistance from police, was not unduly suggestive. *G. S. Crawley v. United States* (D.C. App. 1974, 314 A. 2d 487).

Indictment

Any infirmity in grand jury proceedings because of failure of complainant and one of police officers to state that pistol used in shooting was victim's, that victim had in-

formed grand jury that one defendant's job was that of a robber and that during the proceedings the prosecutor referred to another case against one defendant, is not of such a nature as to warrant dismissal since there was ample other evidence on which the grand jury could have returned the indictment. *E. Blango v. United States* (D.C. App. 1975, 335 A. 2d 230).

Pendency of grand jury indictment charging assault with a dangerous weapon did not prohibit a second grand jury from considering and returning indictment charging not only the same count of assault with a dangerous weapon but the additional count of carrying a dangerous weapon, regardless of whether prior grand jury refused to return a bill charging the offense of carrying a dangerous weapon or simply did not consider such offense. *United States v. C. Johnson* (D.C. App. 1974, 328 A. 2d 769).

Inferences

In prosecution against a passenger in rear set of car for carrying without a license a pistol which was found under passenger side of front seat, it was not necessary for Government to show the existence of an aperture in bottom rear of front seat in order to lay a basis for inference of convenient access, in light of fact that it was common knowledge that such an aperture was present in ordinary passenger cars of kind in which defendant was riding. *H. B. Johnson v. United States* (D.C. App. 1973, 309 A. 2d 497; cert. denied 94 S. Ct. 1960, 416 U.S. 951).

Instructions

Giving of instruction that jury must acquit unless prosecution proved each element beyond a reasonable doubt is not plain error on ground that instruction compelled jury to find defendant guilty. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A. 2d 140).

Where missing witness was not present when officers found the defendant in a stairway behind an apartment across the street from witness' house in possession of a gun in a paper bag so that witness could not have elucidated the transaction on crucial issue of whether defendant was in possession of a gun and the "missing witness" instruction and Government's comments thereon might have damaged defendant's credibility with the jury, giving of "missing witness" instruction was reversible error in prosecution for carrying a concealed weapon without a license. *E. L. Haynes v. United States* (D.C. App. 1974, 318 A.2d 901).

In prosecution for first-degree murder and carrying dangerous weapon, jury instruction on sanity which stated that defendant would be immediately committed for mental examination, after which there would be another judicial determination as to whether he was suffering from mental illness at that time and whether he was dangerous to himself and others, and that if defendant was found to be suffering from mental illness but was not dangerous to himself or others he would be released from hospital, was proper. *United States v. R. W. Brown* (1973, 490 F.2d 758, 160 U.S. App. D.C. 190).

Where hearsay statement circumstantially probative of declarant's state of mind involves extraneous factual elements, limiting instruction must always accompany its introduction into issue to insure that such factual matters are considered solely on issue of declarant's mental state and not for truth of matters contained therein. *Id.*

In prosecution for carrying pistol without a license, defendant's proffered testimony indicating that he picked up pistol which he found on ground and put in in his waistband to prevent it from being used by others in hostile crowd intending to turn it over to police when opportunity arose, that he then walked into area of crowd and that he was not in immediate fear of attack when he found the pistol was insufficient to raise issue of self-defense and was inadmissible. *F. T. Mitchell v. United States* (D.C. App. 1973, 302 A. 2d 216).

Jencks Act

Refusal to strike testimony of witnesses on account of prosecution's failure to preserve and produce their grand jury testimony was not error where it appeared that their testimony was not recorded due to a malfunction of a recording device, without negligence or bad faith on Gov-

ernment's part. *D. L. Washington v. United States* (D.C. App. 1975, 343 A. 2d 560).

Joinder

Joinder of defendants, one charged with a misdemeanor and the other with a felony in connection with carrying a deadly weapon, could be accomplished by filing an information against the former and, upon indictment of his codefendant, moving for joinder. *T. Freeman v. Honorable D. S. Smith* (D.C. App. 1973, 301 A. 2d 217).

Judge's comments

In prosecution for, inter alia, carrying a dangerous weapon, where comment by the court that if there was any believable evidence in the case, it was to effect that pistol was carried outside defendants' home or place of business was sustained by uncontradicted evidence and judge explicitly charged that all matters of fact were to be determined by the jury, no harm could result to defendants, who, in any event, failed to object. *United States v. T. B. Dixon* (1972, 469 F. 2d 940, 152 U.S. App. D.C. 200).

Jury

Fact that three of the jurors in defendant's case had served on jury which two days earlier had been "castigated" by another judge for rendering a verdict of not guilty did not result in reversible error. *United States v. W. G. Kyle* (1972, 469 F. 2d 547, 152 U.S. App. D.C. 141; cert. denied 93 S. Ct. 920, 409 U.S. 1117).

Where prosecutor who knew that three jurors in case had served on a jury which only two days earlier had been "castigated" by another judge for rendering a verdict of not guilty was concerned primarily with jurors' unfavorable attitude to the prosecution rather than with the speculative effect of the comments of the previous judge, prosecutor's failure to transmit to defense counsel his knowledge that three jurors had been members of the previous jury and that previous jury had been scolded by the other judge was not ground for reversal of conviction. *Id.*

Where, at first trial, juror commented that she had observed defendant going through jury list containing name, age, address and business of all jurors, prohibiting examination of jurors' list by defendant at retrial did not prejudice defendant who heard names of all jurors as they were called to box during selection, who was able to determine from his own observation their sex and approximate age, whose counsel examined prospective jurors on voir dire and exercised peremptory challenges against some of them and who had opportunity during selection process to confer with his counsel. *J. D. Maxwell v. United States* (D.C. App. 1972, 297 A. 2d 771; cert. denied 93 S. Ct. 2740, 412 U.S. 921).

Poll

Trial court committed reversible error by continuing to poll jury after first juror had indicated she did not agree with guilty verdict on the first armed robbery count, notwithstanding government hypothesis that dissenting juror was confused by multiple-count indictment, since trial judge, rather than stopping poll and questioning juror to determine if she were confused by indictment, chose to continue the poll. *J. Kendall v. United States* (D.C. App. 1975, 349 A. 2d 464).

Knowledge

In prosecution for carrying a pistol without a license, it is not necessary that Government offer direct proof of knowledge of presence of the pistol. *H. B. Johnson v. United States* (D.C. App. 1973, 309 A. 2d 497; cert. denied 94 S. Ct. 1960, 416 U.S. 951).

Fact that there were three persons and three pistols in car, together with suspicious activity of occupants prior to their car being halted, provided sufficient grounds for jury, in prosecution for carrying a pistol without a license, to conclude that defendant knew of presence of the pistol. *Id.*

Mental capacity

Record, including testimony of a private psychiatrist who examined defendant at government expense, was sufficient to support finding that criminal acts committed by defendant (armed robbery, assault with a dangerous weapon, and carrying a dangerous weapon) were not so proximately tied to defendant's mental impairment as to require his exculpation. *United States v. G. A. Wilson*

(1972, 471 F. 2d 1072, 153 U.S. App. D.C. 104; cert. denied 93 S. Ct. 1431, 410 U.S. 957).

Mistrial

Refusal to declare a mistrial, on ground that disturbance which occurred outside the courtroom but in jury's presence, which involved defendant and his father and which was prompted by removal of the father for creating a disturbance in the courtroom, is not abuse of discretion where after full hearing trial judge found that incident was prompted by defendant, without provocation from prosecution, and court fully instructed jury to disregard incident and reach a verdict based solely on evidence presented in the courtroom. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A. 2d 140).

Plain error

In prosecution for carrying a dangerous weapon, assaulting a police officer, and unlawful possession of narcotic drug, sustaining as valid Fifth Amendment privilege claimed by defense witness called to corroborate testimony of defendant, who did not claim infringement of his own Fifth Amendment privilege against self-incrimination, was not plain error, on theory that he was denied a fair trial, where there was no pretense the record would support an inference of prosecutorial misconduct or that Government's case was buttressed by the witness' exercise of the privilege against self-incrimination, and where witness was called by defense counsel with full prior knowledge that privilege would be invoked. *R. W. Mack v. United States* (D.C. App. 1973, 310 A. 2d 234).

The identification of defendant's photograph by assault victim, the two lineup identifications, the composite drawing, defendant's presence in the area of the attack, the two in-court identifications of him, and the clothing recovered from his home left so small a probability that probable cause was lacking in the case that the discretion of the Court of Appeals to consider plain error would not be wisely exercised by entertaining unraised issue regarding the trial court's alleged error in not suppressing identifications flowing from photographs taken of defendant when he was allegedly taken to police station without probable cause. *R. E. Adams, Jr. v. United States* (D.C. App. 1973, 302 A. 2d 232).

Possession of firearms

Defendant on a public street found standing near a gun partially concealed beneath an auto, without more, can not be deemed to have sufficient knowledge and control of the weapon so as to be criminally responsible for its possession. *R. Outtz v. United States* (D.C. App. 1973, 306 A. 2d 664).

Fact of constructive possession does not depend upon ownership. *L. D. Jones v. United States* (D.C. App. 1973, 299 A. 2d 538).

Evidence that pistol was located on console between driver and defendant passenger and that passenger had ammunition in his coat pocket of same caliber as pistol was sufficient to establish constructive possession in passenger. *Id.*

Innocent or momentary

In order to assert defense of innocent or momentary possession of pistol as defense to charge of carrying pistol without a license, accused must show not only an absence of criminal purpose, but also that his possession was excused and justified as stemming from an affirmative effort to aid and enhance social policy underlying law enforcement. *M. Hines v. United States* (D.C. App. 1974, 326 A. 2d 247).

Prearrest delay

Record was devoid of any indication that delay in arresting defendant, which occurred ten months after date of the offenses, was the product of any deliberate effort by police to gain an advantage, record furnished abundant evidentiary support for finding that a reasonable endeavor was made to locate defendant and, in addition, record sustained additional finding that, in any event, defendant was not harmed by the delay, in prosecution for armed robbery, assault with a dangerous weapon, and for carrying a pistol without a license. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Probable cause

Officer, who received over his radio a "flash lookout" for car of a specifically described make, color and license tag proceeding in certain direction with two people with a pistol, who was informed as to the identity of police officer being advised by citizen that occupants of car had gun, who was advised that such officer had seen such car and had verified both its description and number of its occupants and who observed car within 20 minutes of receiving the lookout, had probable cause to stop and search car for pistol. *C. H. Galloway v. United States* (D.C. App. 1974, 326 A. 2d 803; cert. denied 95 S. Ct. 1981, 421 U.S. 979).

Defendant's actions in hastily applying brakes upon seeing police officers, in switching places with his passenger, and in then leaning forward as if to hide something under his seat gave officer, when coupled with his discovery of suspected narcotics, probable cause to search for contraband under the seat where defendant had been sitting. *C. H. Spencer v. United States* (D.C. App. 1974, 316 A. 2d 331).

Where patrolling officer observed defendant drive by and observed on dashboard of defendant's automobile a box similar to those used to commercially package ammunition, officer had right to stop vehicle to inquire whether defendant in fact possessed a gun and, if so, whether there was compliance with local licensing statute; failure of defendant, who stated that he was carrying a weapon, to produce license constituted probable cause for arrest and authorized protective search; pistol seized in search was admissible. *J. Gordon v. United States* (D.C. App. 1973, 305 A. 2d 522).

Discrepancy between name on license and registration, defendant's failure to know who owned vehicle, defendant's inherently incredible explanation of how he came to be driving vehicle, defendant's "furtive movement" on being honked at by officers after he had seen them following him, and mutilated inspection sticker on vehicle constituted probable cause for a reasonably prudent officer to arrest defendant for unauthorized use of a vehicle, and subsequent search of vehicle and defendant's person, with consequent discovery of a pistol, was lawful. *K. L. Williams v. United States* (D.C. App. 1973, 304 A. 2d 287).

Proof

In prosecution for carrying a pistol without a license, Government must prove that the pistol was conveniently accessible to defendant, and that he knew of its presence. *H. B. Johnson v. United States* (D.C. App. 1973, 309 A. 2d 497; cert. denied 94 S. Ct. 1960, 416 U.S. 951).

Prosecution

Defendant could be properly charged and convicted of not only federal bank robbery but also under this section of the D.C. Code relating to carrying of a dangerous weapon, since federal bank robbery statute is unconcerned with the type of weapon person might use or with his right under local law to carry such weapon. *United States v. C. L. Canty* (1972, 469 F. 2d 114, 152 U.S. App. D.C. 103).

Prosecutor had authority to charge the defendant, a felon who possessed an unlicensed pistol while not in his dwelling or on his land, under felony-repeater provisions of this section, rather than under misdemeanor statute [§ 22-3203] and by doing so did not deny right to equal protection. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; aff'd 93 S. Ct. 1970, 411 U.S. 389).

Prosecutor's comments

Comments of prosecutor during assault trial to the effect, inter alia, that missing witness was too scared to come and testify, that defendants were killers and were dressed like gangsters, that one defendant was a "young buck," that guilty verdict would be a matter of achievement and courage, and that presumption of innocence might not apply as much to defendants as it might to others in less serious cases did not rise to the level of substantial prejudice necessary for reversal, in light of the strength of the Government's case and correcting instructions by the trial court. *R. L. Smith v. United States* (D.C. App. 1974, 315 A. 2d 163; cert. denied 95 S.Ct. 174, 419 U.S. 896).

Where critical issue in homicide prosecution was matter of self-defense, action of government prosecutor in stating to subpoenaed defense witness, an eyewitness to killing, that such witness should see independent counsel and that if witness testified as indicated by other testimony then he could or would be prosecuted for carrying a concealed weapon, obstructing justice and as an accessory to murder was prejudicial to defendant who was entitled to have such witness put on stand without interference or intimidation by prosecutor, and interests of justice also required that the conviction of codefendant, who was convicted on theory of aiding and abetting defendant, should also be reversed. *United States v. C. L. Smith* (1973, 478 F. 2d 976, 156 U.S. App. D.C. 66).

Prosecutor's remarks to jury

Reference in Government's rebuttal argument to lack of corroboration of defendant's testimony concerning alleged passenger in defendant's automobile did not constitute improper comment on a missing witness since remarks did not directly, or in a meaningful indirect manner, ask the jury to draw an impermissible inference from absence of alleged passenger; to extent that existence of passenger was challenged it was clearly in context of his existence as a passenger of defendant, charged with carrying a pistol without a license, on evening of arrest rather than as possessor of pistol, which was found in defendant's automobile. *United States v. J. D. Henson* (1973, 486 F. 2d 1292, 159 U.S. App. D.C. 32).

Government's suggestion, during its summation, of corroboration of nature of gun placement within reach of defendant, charged with carrying a pistol without a license, was not improper since it was supported at least by one arresting officer's discovery of bag, which was located on passenger's side of transmission hump of defendant's automobile but within reach of driver and from which butt of loaded gun was protruding; however, any error in such regard would not have amounted to reversible error. *Id.*

In prosecution for carrying a dangerous weapon, prosecutor's reference to defendant during argument to jury as a "burglar, thief, robber" was improper but did not prejudice defendant in view of fact that prosecutor ceased his argument immediately upon using the objectionable words, that trial court clearly instructed jury shortly before prosecutor's improper remark that evidence of defendant's prior convictions was introduced solely for a limited purpose and that both prosecutor and defense counsel repeated and reemphasized the limited purpose for which evidence of prior convictions had been introduced. *J. D. Maxwell v. United States* (D.C. App. 1972, 297 A. 2d 771; cert. denied 93 S. Ct. 1970, 412 U.S. 921).

Purpose of carrying weapon

Defendant's purpose of showing new found pistol to his girl friend did not amount to innocent or momentary possession such as would be a defense to charge of carrying pistol without a license. *M. Hines v. United States* (D.C. App. 1974, 326 A. 2d 247).

Search and seizure

Even though evidence was seized pursuant to arrest based on warrant which called for arrest of another man, suppression of evidence is not required where arrest was made pursuant to presumably valid warrant and, although arrest was mistaken, it was carried out by police officers acting reasonably and in good faith. *R. B. Sanders v. United States* (D.C. App. 1975, 339 A. 2d 373).

Where alleged assault victim informed police that her husband had threatened to shoot her with a gun and, after husband was frisked and apartment searched without result, stated that gun must be in certain automobile, which was accurately described, and police frisked husband and defendant who were then both sitting in described automobile, exigent circumstances existed for warrantless search of automobile, which belonged to defendant, and thus pistol and ammunition which were found in search of automobile are not fruits or illegal search so as to be inadmissible in subsequent prosecution of defendant. *United States v. W. F. Wilkerson* (D.C. App. 1975, 338 A. 2d 441).

Even though police officer who observed two men at 10 p.m. knocking on front door of house located in area having numerous burglaries and observed men hurriedly walk from front door upon seeing him was justified in

stopping men to inquire if they resided at house, where men produced identification upon officer's request and further inquiry of occupant of house while men were detained failed to develop articulable facts that they had committed or were about to commit a crime, continued detention of men and frisk of their persons while their identifications were checked out constitutes unreasonable seizure, precluding admission of items discovered during frisk. *G. Coleman v. United States* (D.C. App. 1975, 337 A. 2d 767).

Where pretrial motion to suppress has been denied and, realistically, only available issue in "possession of contraband" case is search or seizure, approved procedure is to stipulate the facts as alleged in information and have court render verdict thereon in order to preserve Fourth Amendment issue on appeal. *United States v. J. L. Allen* (D.C. App. 1975, 337 A. 2d 512).

Where defendant, who had been stopped while operating his motor vehicle, had been placed under valid arrest, defendant's passenger was not in possession of a valid permit and police officers, being aware that recent crowd violence had resulted in injury to policeman, placed defendant and his passenger in one of the squad cars to transport them to nearby police station, one of the arresting officers rightfully entered defendant's automobile, which was blocking traffic, and, thus, pistol which such officer observed in plain view as he glanced at an area near clutch and brake pedal was properly seized, even if the passenger had been illegally arrested. *G. H. Jones v. United States* (D.C. App. 1974, 330 A. 2d 248).

Where passenger-owner of automobile told police officer that defendant driver had a gun, police officer had constitutional justification for seizing gun and arresting defendant for carrying pistol without a license even if gun was seized from automobile seat as defendant exposed it to officer's view, as claimed by defendant, rather than from defendant's person, as claimed by officer. *J. E. Poteat v. United States* (D.C. App. 1974, 330 A. 2d 229).

Where police officer stopped defendant on basis of six-month-old warrant for assault, where defendant, after being arrested, asked if his passenger could drive the automobile home, where police officer went to automobile to see if passenger had a driver's license, where officer searched under the front seat of the automobile for a weapon, and, after completing that search, observed gun under front seat armrest while he was standing outside the automobile, the weapon was in plain view so that there was no search or unlawful seizure, even though the search under the seat may not have been reasonable and regardless of whether the arrest on the six-month-old warrant was a sham. *R. E. Rippey v. United States* (D.C. App. 1974, 322 A.2d 276).

Facts known to police officer, including his observation of assault victim and the victim's spontaneous positive identification of defendant, unquestionably gave officer probable cause to arrest, and the ensuing search of defendant which uncovered pistol was therefore valid as incidental to the arrest. *M. W. Hardy v. United States* (D.C. App. 1974, 316 A. 2d 867).

Even if police officer did not have probable cause to arrest defendant when he approached him, a protective frisk of defendant's outer clothing was justified by fact that assault victim had positively identified defendant as his assailant and had told the officer that defendant was armed, and by fact that, as the officer approached defendant, he saw defendant start to reach in his pocket. *Id.*

Where first officer, believing that defendant was a major narcotics violator, stopped his cruiser and confronted defendant, who satisfied officer that defendant was not wanted on bench warrant, and where second officer saw defendant reaching several times to put his hand on his back pocket, belief of second officer that defendant might have been armed and dangerous was reasonable, so as to justify search which revealed pistol, in view of fact that second officer had not been able to hear conversation between first officer and defendant and did not speak to first officer before second officer reached into defendant's pocket and discovered pistol. *W. H. Lyons v. United States* (D.C. App. 1974, 315 A. 2d 561).

Where police officers proceeded to area where gunshots were heard, where they were told "they went down the street in a red car," where officers observed red car traveling without lights within three or four blocks of such

location, and where they observed occupants acting as if they were hiding something, officers acted properly in stopping car and ordering occupants out of it, thereby giving one officer opportunity to be in position to obtain plain view of shotgun and pistol. *G. S. Crawley v. United States* (D.C. App. 1974, 314 A. 2d 487).

Where police officers watched defendants stalk two female pedestrians at 2:00 in the morning, return to their car, depart abruptly, and lead police officers in high-speed chase, and where one occupant had been seen leaning down in the front seat, police officers were justified in stopping the car and searching under the front seat and behind the glove compartment where stolen, unlicensed pistol was found, after the occupants had been removed from the car. *United States v. J. W. Thomas and W. L. Sutton* (D.C. App. 1974, 314 A. 2d 464).

Police officers, after properly stopping car and frisking passenger, who was found to be carrying a loaded pistol, had probable cause to infer that some joint criminal enterprise was planned and to make a warrantless search of the car, resulting in the discovery of another revolver under driver's seat. *R. W. Jeffreys, Jr., et ano. v. United States* (D.C. App. 1973, 312 A. 2d 308).

Although defendant was seated in a car parked in an alley in a high crime area at approximately 3:30 A.M., and although it appeared that defendant, upon investigation by officers, began to get nervous and fumbled with something in area of his seat, it was not reasonable for officers to open car door, and search of car did not come within plain view or within any of other exceptions to warrant requirement, where there was no police report accusing defendant of having a gun, and there was no reason to believe that a crime other than a parking offense had been committed. *J. A. Tyler v. United States* (D.C. App. 1973, 302 A. 2d 748).

Where there had been no report of a crime in area, police officer at time of search was not investigating any criminal act, defendant's actions were not suspicious and incident occurred in afternoon, police officer did not have reason to believe that defendant was possessed of a weapon or that crime had been committed or was in process of commission, stop and frisk of defendant and seizure of pistol from defendant's person was not reasonable and pistol was inadmissible in prosecution for carrying a pistol without a license. *T. Kenion v. United States* (D.C. App. 1973, 302 A. 2d 723).

Where police officer was trying to ascertain the name of owner of an automobile he had ample reason to believe was stolen when officer inadvertently came upon pistol in glove compartment at police station parking lot where defendant and vehicle had been taken following arrest, the warrantless search and the seizure of the pistol, which served as basis for subsequent prosecution of carrying pistol without a license and possessing an unregistered firearm and unlawfully possessing ammunition, was not unreasonable. *P. Patterson v. United States and District of Columbia* (D.C. App. 1973, 301 A. 2d 67).

Putative police regulation requiring a frisk of anyone getting into a patrol car whom the police don't know or believe to have committed a crime did not justify the frisk of defendant, resulting in discovery that he was carrying an unlicensed pistol, where one police officer candidly testified that in his own mind defendant was free to go before the frisk took place, and where, clearly, the frisk occurred in spite of the fact that police officers were not even suspicious that defendant was armed or dangerous. *I. Gilchrist v. United States* (D.C. App. 1973, 300 A. 2d 453).

Where police officer, in investigating gunshot, approached parked automobile and asked driver, who had been pointed out, by other persons, to step from the vehicle, officer possessed right under the circumstances to be in position to have view of pistol lying on front seat, and seizure of the pistol, which was within plain view of officer, was proper and was not objectionable as product of a search, illegal or otherwise. *A. Ragland v. United States* (D.C. App. 1973, 299 A. 2d 141).

Where police officer heard the squeal of tires as defendant's car turned corner, observed car back into driveway across street from squad car, approached defendant's car to ascertain registration and permit, was warned by second officer that defendant was "bent over, inside the car," observed defendant's furtive movements, and

observed defendant get out of car and lock door, no justification for warrantless search was presented. *R. C. Watts v. United States* (D.C. App. 1972, 297 A. 2d 790).

Actions of police officers in stopping rented vehicle in order to determine if the defendant had proper license and rental agreement was reasonable, and seizure of pistol that was in plain view of officer who was looking at interior of car with flashlight while other officer was engaged in conversation with defendant did not violate the Fourth Amendment. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; aff'd 93 S. Ct. 1670, 411 U.S. 389).

Self-defense

In prosecution for carrying a pistol without a license, even if defendant had showed facts sufficient to justify instruction on possession of weapon for self-defense, requested instruction requiring acquittal if jury found possession of pistol was for an innocent purpose was too broad and was properly refused. *F. T. Mitchell v. United States* (D.C. App. 1973, 302 A. 2d 216).

Sentence

Imposition of consecutive sentences for assault with a dangerous weapon and carrying a dangerous weapon is proper, notwithstanding that offenses arose out of the same transaction, since offense of carrying a dangerous weapon requires proof that the weapon was unlicensed while offense of assault with a dangerous weapon does not. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A. 2d 140).

Convictions arising from separate indictment handed down on same date can not be relied on to enhance punishment as third offender. *D. L. Washington v. United States* (D.C. App. 1975, 343 A. 2d 560).

Fact that jury made no finding as to prior felony convictions did not preclude sentencing under repeat offender provision. *C. C. Anderson v. United States* (D.C. App. 1974, 326 A. 2d 807; cert. denied 95 S. Ct. 1405, 420 U.S. 978).

Where enhanced penalty provisions for conviction of carrying a dangerous weapon were not properly invoked, sentence imposed must be vacated and case remanded for resentencing. *C. Savage v. United States* (D.C. App. 1974, 313 A. 2d 880).

Where defendant had been convicted of assault with intent to kill armed with dangerous weapon, with sentence of from three to nine years, for assault with dangerous weapon, with concurrent two to six-year sentence, and carrying pistol without license, with concurrent one-year sentence, two to six-year sentence would be vacated on appeal, without remand. *United States v. E. T. Wimbush* (1973, 475 F. 2d 347, 154 U.S. App. D.C. 236).

Trial judge's statement that it was almost inconceivable that youth, who had been convicted of two counts of assault with a dangerous weapon and one count of carrying a dangerous weapon, could be handled under Federal Youth Corrections Act in view of his prior convictions of armed robbery and assault with dangerous weapon, his extensive juvenile record and fact that he had repeatedly absconded from juvenile correctional facilities constituted a sufficient affirmative on-the-record finding that youth would not benefit from treatment under the Act and trial judge's refusal to sentence youth under the Act was within his discretion. *L. T. Paul v. United States* (D.C. App. 1973, 301 A. 2d 226).

Speedy trial

Right to speedy trial of defendant, charged with armed robbery, assault with dangerous weapon, and of carrying a pistol without a license, was not impinged by nine-month delay extending from his indictment to his trial where, during the first two months defendant was still at large and police were doing their best to locate him, where defendant did not press a speedy trial right until five months after he was arrested, and where record was sufficient to sustain finding that defendant suffered no prejudice to his defense which could be attributed to the delay at the postarrest stage of the prosecution. *United States v. L. Parish* (1972, 468 F. 2d 1129, 152 U.S. App. D.C. 72; cert. denied 93 S. Ct. 1430, 410 U.S. 957).

Verdict

Fact that jury acquitted defendant on charge of carrying a dangerous weapon did not require them to find defendant not guilty on charge of assault with deadly

weapon. *F. C. Winters v. United States* (D.C. App. 1974, 317 A. 2d 530).

Witnesses

Failure of trial court to admit into evidence prior inconsistent statement of a witness, after witness did not deny its truth, was error, but such error was not prejudicial where the inconsistent statement was read in whole by the witness to the jury and was used extensively by defense counsel in cross-examination. *C. A. Jefferson v. United States* (D.C. App. 1974, 328 A. 2d 85).

Prior inconsistent statement is admissible only to impeach credibility of a witness and may not be used as affirmative proof of its contents. *Id.*

Competency of mentally retarded 18-year-old prosecutrix to testify in prosecution for assault with intent to commit rape while armed, assault with a dangerous weapon and carrying a dangerous weapon, was a threshold question of law committed to the trial court's discretion; it remained for the jury, however, to assess credibility of the witness and the weight to be given her testimony. *United States v. H. Benn, Jr.* (1973, 476 F. 2d 1127, 155 U.S. App. D.C. 180).

§ 22-3205. Exceptions to section 22-3204.

NOTES TO DECISIONS

Burden of proving exception

Where a defendant interposes an affirmative defense such as an exception in a statute, it is his burden to bring himself within the exception rather than that of the prosecutor to negative it. *R. W. Middleton v. United States* (D.C. App. 1973, 305 A. 2d 259).

Corrections officer

Under statutory provision excepting from prohibition against carrying pistols "jail wardens, or their deputies, policemen or other duly appointed law enforcement officers, or to members of the Army, Navy, or Marine Corps of United States or of the National Guard or Organized Reserves when on duty," corrections officer is not prohibited from carrying pistol whether or not "on duty." *United States v. D. Pritchett, Jr.* (1972, 470 F. 2d 455, 152 U.S. App. D.C. 307).

Federal protective officer

Defendant, who was a federal protective officer within the general services administration, was not, for purposes of statute prohibiting carrying a pistol without a license, within the exemption which applies to "policemen and other duly appointed law-enforcement officers," where there was no authorization for federal protective service officers to carry firearms other than while on duty or in a travel status to and from duty assignments, while defendant at the time of his arrest was returning from a personal trip to Baltimore totally unrelated to his duties as a federal protective service officer, though, as such officer, he had the same civil service classification as applied to members of the metropolitan police department. *R. W. Middleton v. United States* (D.C. App. 1973, 305 A. 2d 259).

§ 22-3206. Issue of licenses to carry pistol.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Application for license

Applications for licenses to carry concealed weapons should be treated under proper regulatory criteria duly adopted. *A. F. Jordan, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 315 A. 2d 153).

Petitioner's 1972 application for license to carry concealed weapon could not be considered merely an extension of his 1969 application, which contained answers to various questions relevant to licensing requirement, since petitioner's change of position respecting his willingness to furnish such information on 1972 application could

give rise to inference that his qualifications or status had changed. *Id.*

Construction

This section authorizing superintendent of police of District of Columbia to issue a license to carry a concealed weapon when it appears that the applicant has good reason to fear injury to his person or property or has any other proper reason for carrying a pistol and that he is a suitable person to be so licensed did not preempt field of gun legislation and preclude chief of police from adopting additional license information requirements and criteria, specifically requirement that applicant present substantial evidence of a specific threat to his life that cannot be alleviated by use of conventional methods; such additional information is relevant to licensing decision and failure to furnish it forms an adequate basis for denial of the license. *A. F. Jordan, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 315 A. 2d 153).

Publication

Whatever rule is used in District of Columbia to determine eligibility for a license to carry a handgun, it must be adopted, published, and applied according to law, and remain consistent with congressional policy. *A. F. Jordan, Jr. v. District of Columbia Board of Appeals and Review* (D.C. App. 1974, 315 A. 2d 153).

Fact that certain of the police regulations governing applications for license to carry concealed weapon in District of Columbia had not been compiled and published as required by statute did not require blind issuance of such a license to petitioner, who failed to satisfy such regulations. *Id.*

§ 22-3210. Licenses of dealers of weapons—Records—By whom granted—Conditions thereof.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-3214. Possession of certain dangerous weapons prohibited—Exceptions.

NOTES TO DECISIONS

Burden of proof

In a prosecution for possession of certain prohibited articles, including dangerous weapons, once Government alleges possession of prohibited article, burden does not shift to accused to establish innocence of possession but burden rests on Government to prove beyond reasonable doubt all elements of offense. *United States v. V. B. Brooks* (D.C. App. 1974, 330 A. 2d 245).

Constitutionality

Statute which prohibits a person from possessing, with intent to use unlawfully against another, an imitation pistol or dagger, dirk, razor, stiletto, or knife with a blade longer than three inches or other dangerous weapon is not void for vagueness on ground that term "dangerous weapon" is not defined with sufficient particularity. *United States v. V. B. Brooks* (D.C. App. 1974, 330 A. 2d 245).

Cross-examination

Where defendant, charged with possession of prohibited weapon and with assault with a dangerous weapon, called as a character witness his employer who testified that defendant had a good reputation in the community of keeping the peace and good order, cross-examination of employer as to whether he had heard that defendant had been convicted of the crime of false pretenses was proper. *S. M. Darden v. United States* (D.C. App. 1975, 342 A. 2d 24).

Elements of offense

In a prosecution for possession of certain prohibited articles, including dangerous weapons, Government must establish not only that accused possessed a proscribed article but also that accused possessed it with intent to

use it unlawfully against another. *United States v. V. B. Brooks* (D.C. App. 1974, 330 A. 2d 245).

Intent to use unlawfully is a required element in both the offense of assault with a dangerous weapon and the offense of possession of a dangerous weapon with intent to use unlawfully against another. *Id.*

Evidence—Sufficiency

Evidence which was adequate to enable jury to find that the possession of weapons, which were in a car in which defendants were riding, could be knowledgeably attributable to defendants was sufficient to sustain their convictions for possession of unregistered firearms, possession of prohibited weapons and carrying a dangerous weapon. *United States v. J. C. Matthews* (1973, 480 F. 2d 1191, 156 U.S. App. D.C. 299).

Instructions

Trial court properly instructed jury on testimony of accomplices rather than testimony of informers with respect to testimony of witness who had pled guilty to one count of indictment under which he and defendant were charged on the day before defendant's trial and who had participated in the crime with defendant. *United States v. M. W. Thorne* (1975, 527 F. 2d 840, — U.S. App. D.C. —).

Promptly corrected misstatement of instruction by court to effect no specific intent and only general intent need be found for conviction on count charging possession of a prohibited weapon was not so confusing as to prevent fair deliberation of defendant's innocence by jury which convicted him of the greater offense of assault with a dangerous weapon, the general intent crime, and reached no verdict, as it was instructed, on lesser included offense of possession of a prohibited weapon. *S. M. Darden v. United States* (D.C. App. 1975, 342 A. 2d 24).

Jury question

Question whether wooden table leg which was approximately two inches thick and two and one-half feet long and which was thrown at mailman was a "dangerous weapon" within meaning of statute prohibiting the possession of a dangerous weapon with intent to use unlawfully against another was for jury. *United States v. V. B. Brooks* (D.C. App. 1974, 330 A. 2d 245).

Search and seizure

Police officer, upon encountering defendant at 8:30 P.M. on stairs between third and fourth floors of hotel whose owner had requested special police attention because of the high crime rate in the hotel, did not place defendant under arrest in simply telling him to "hold it" after defendant had made a quick move to go back up the stairs, and the district court therefore erroneously measured the action of the officer, including a search of defendant's person and seizure of a sawed-off shotgun and shotgun shells, against the probable-cause-to-arrest standard, rather than against the standard of "reasonableness" appropriate for a temporary detention. *United States v. W. J. Coates* (1974, 495 F.2d 160, 161 U.S. App. D.C. 334).

Entry of hotel room without warrant and seizure of sawed-off shotgun was valid, where shotgun had first been observed on table by member of hotel staff, entry by the police was peaceful and during the daytime, and occupant was a nonresident who had recently checked into a transient hotel, since the sawed-off shotgun posed ominous threat to the community. *United States v. E. C. McKinney* (1973, 477 F. 2d 1184, 155 U.S. App. D.C. 299).

§ 22-3215a. Manufacture, transfer, use, possession or transportation of molotov cocktails, or other explosives for unlawful purposes, prohibited—Definitions—Penalties.

NOTES TO DECISIONS

Construction

Mere fact that Congress in enacting District of Columbia Code provision which expressly prohibits possession of "Molotov cocktails" within District apparently desired to legislate against "Molotov cocktails" and other explosive devices directly under District of Columbia power where it was available did not mean that "Molotov cocktails" were not included within term destructive devices under the National Firearms Act in which Congress chose to resort to registration under taxing power for nationwide applicability. *United States v. J. T. Cruz et al.* (1974, 492

F.2d 217, 2nd Cir.; cert. denied 94 S.Ct. 2649, 417 U.S. 935).

Evidence—Sufficiency

Evidence was not sufficient to support convictions for arson, second-degree burglary while armed with a Molotov cocktail and possession of a Molotov cocktail. *United States v. L. S. Carter* (1975, 522 F. 2d 666, 173 U.S. App. D.C. 54).

Inferences

Giving of instruction that jurors were permitted to infer that second defendant was "guilty of the crimes charged," if they determined, beyond a reasonable doubt, that he was found in unexplained, exclusive possession of recently stolen property was reversible error where the presumed fact of guilt of arson, possession of a Molotov cocktail and second-degree burglary while armed with a Molotov cocktail did not flow from possession of recently stolen military rifles. *United States v. L. S. Carter* (1975, 522 F. 2d 666, 173 U.S. App. D.C. 54).

§ 22-3217. Dangerous articles—Definition—Taking and destruction—Procedure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 33.—VAGRANCY

§ 22-3302. "Vagrants" defined.

NOTES TO DECISIONS

Constitutionality

Because of backdrop of changing law and practice in the last five years during which part of this section was declared unconstitutional followed by a plethora of police regulations pertaining to street investigations, record which contained only two incidents involving plaintiff more than five years previously under the then effective vagrancy procedures was insufficient basis upon which to grant relief to plaintiff in his request for class action and a declaration of unconstitutionality of the remaining subsections of this section. *M. J. Gomez v. J. V. Wilson, Chief of Police, et al.* (1973, 477 F. 2d 411, 155 U.S. App. D.C. 243; remanding 323 F. Supp. 87).

Policy vagrancy observation practices

Alleged improper vagrancy observation practices by the District of Columbia police furnished no basis for federal jurisdiction by virtue of the civil rights statute giving rise to cause of action for deprivation of rights under color of law. *M. J. Gomez v. J. V. Wilson, Chief of Police, et al.* (1973, 477 F. 2d 411, 155 U.S. App. D.C. 243; remanding 323 F. Supp. 87).

Remand

Since record based on two five-year-old incidents involving plaintiff and District of Columbia vagrancy procedures was insufficient, due to new police regulations and court decisions, to authorize Court of Appeals to adjudicate question of constitutionality of remaining provisions of this section, or the propriety of class action injunctive relief against a pattern of police misconduct, but new information arising after case had left district court was sufficient to entitle plaintiff to an opportunity to update lawsuit as predicate for possible further relief, Court of Appeals would remand cause for purpose of renovating pleadings. *M. J. Gomez v. J. V. Wilson, Chief of Police, et al.* (1973, 477 F. 2d 411, 155 U.S. App. D.C. 243; remanding 323 F. Supp. 87).

Chapter 34.—MISCELLANEOUS

§ 22-3409. Mislabelling potatoes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-3419. Council to make rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-3425. Prosecutions for violations of section 22-3423—Corporation Counsel defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 22-3427. Breaking and entering vending machines and similar devices—Penalties.

NOTES TO DECISIONS

Indictment

Indictment charging that defendant "broke open, opened, and entered without right a juke box, with intent to carry away a part of such device, and something contained therein" was in sufficient for failure to aver that property belonged to someone other than defendant. *United States v. W. E. Pendergrast* (D.C. App. 1973, 313 A. 2d 103).

Chapter 35.—SEXUAL PSYCHOPATHS

§ 22-3501. Indecent acts—Children.

NOTES TO DECISIONS

Abuse of discretion

Testimony in prosecution for taking indecent liberties with a minor that complainant had a reputation both for unchastity and as an agitator would have been irrelevant and its exclusion did not constitute an abuse of discretion. *A. R. Springs v. United States* (D.C. App. 1973, 311 A. 2d 499).

Constitutionality

Child molestation statute, prohibiting enticing a minor child to a place for purposes of taking immoral, improper or indecent liberties with the child, described with reasonable specificity the conduct which was proscribed and was not void for vagueness. *V. J. Moore v. United States* (D.C. App. 1973, 306 A. 2d 278).

Corroboration

Uncorroborated testimony of the complaining witness is insufficient to establish corpus delicti in a child molestation case. *V. J. Moore v. United States* (D.C. App. 1973, 306 A. 2d 278).

Where defendant, who was charged with enticing a minor child to a place for purposes of taking immoral, improper or indecent liberties with the child, admitted that the ten-year-old female complainant was in his apartment at the time in question, where the girl's presence in the apartment was consistent with her version of what took place there, and where, in addition, police officer testified that the building door had been locked, thus corroborating girl's testimony that someone had opened the door for her, those factors, coupled with the girl's "excited" state when she promptly reported the incident to her mother, enabled fact finder to conclude beyond a reasonable doubt that the girl's account of the crime was not a fabrication. *Id.*

Testimony of complaining witnesses in prosecution for taking indecent liberties with minor as to specific acts of defendant was adequately corroborated by defendant's admissions as to "massages," appearance of girls upon re-

turning home from defendant's apartment, and fact that offense was reported to police on the following day. *C. L. Evans v. United States* (D.C. App. 1973, 299 A. 2d 136).

Criminal sentencing

Where trial judge had a uniform policy of refusing disclosure of presentence reports, and where at outset of the sentencing proceeding defense counsel requested permission to inspect the presentence report, at which point judge responded "It's not my policy. Denied.", trial judge failed to exercise his discretion under rule providing that "The court before pronouncing sentence may disclose to the defendant's counsel all or part of the material contained in the report of the presentence investigation * * *," which required vacating of sentence and remand of the case for resentencing. *A. R. Springs v. United States* (D.C. App. 1973, 311 A. 2d 499).

Discovery

Refusal, in criminal prosecution which accused was convicted of sodomy, taking indecent liberties with a minor and assault with a deadly weapon and in which three potential government witnesses were of tender age, to grant accused discovery of names and addresses of government witnesses was not abuse of discretion. *J. C. Davis v. United States* (D.C. App. 1974, 315 A. 2d 157).

Refusal to grant accused access to complaining witness' subpoenaed school records which reflected no prior homosexual or other serious behavioral problems, was not reversible error. *Id.*

Evidence—Sufficiency

Evidence, in prosecution for taking indecent liberties with minors, including evidence that defendant inserted his hands in pants of complainant around pubic area, inserted his finger in their vaginas, and massaged their breasts, was sufficient to give rise to inference that there was specific intent to arouse his lust, passion or sexual desires. *C. L. Evans v. United States* (D.C. App. 1973, 299 A. 2d 136).

Indictment

Grand jury indictment charging forcible rape, carnal knowledge and indecent liberties was not subject to dismissal on ground that it was based on transcript of sworn testimony before earlier grand jury which returned indictment for carnal knowledge that had been dismissed because of defendant's age, where testimony before first grand jury was not limited to carnal knowledge charge, there was no limitation of issues or offenses in presentation of evidence to first grand jury, and statement of victim, read to first grand jury in her presence and affirmed by her orally under oath, recited details of two acts of forcible rape. *United States v. S. C. Wagoner* (D.C. App. 1974, 313 A. 2d 719; rehearing denied 321 A. 2d 211; cert. denied 95 S.Ct. 630, 419 U.S. 1052).

Instructions

Instruction in prosecution for taking indecent liberties with minors referring to alternative method of committing offense, whereas only one method was charged in indictment, was not, taken as a whole, such as to authorize jury to convict on grounds not charged. *C. L. Evans v. United States* (D.C. App. 1973, 299 A. 2d 136).

Sentence

Notwithstanding claim that failure to grant credit for time served in pretrial and presentence confinement was a violation of petitioner's guarantee to equal protection as well as the law and public policy of the District of Columbia, conclusive presumption arose that credit was given so as to preclude petitioner from obtaining relief, where petitioner was sentenced to two concurrent three to 10-year sentences on counts charging sodomy and an indecent act on a minor child, although petitioner faced a possible 20-year sentence on sodomy count in that victim was under 16 years of age. *L. A. Arrington v. A. McGruder, et al.* (1974, 490 F. 2d 795, 160 U.S. App. D.C. 227).

Sexual purpose

Aborted attempt to expose child's genitals, as evidenced by removing her pants, fairly could be said to demonstrate a sexual purpose within the terms of child molestation statute proscribing enticing a minor child to a place for purposes of taking immoral, improper or indecent

liberties with the child. *V. J. Moore v. United States* (D.C. App. 1973, 306 A. 2d 278).

Specific intent

In prosecution for taking indecent liberties with minor, specific intent to arouse accused may be inferred from accused's actions. *C. L. Evans v. United States* (D.C. App. 1973, 299 A. 2d 136).

Voir dire questions

Refusal, in prosecution for sodomy and taking indecent liberties with a child, to permit accused to ask on voir dire "Is there anyone here who feels" that "sexual acts with a minor are either immoral, illegal or indecent" was not error, in that question was inherently vague and invaded function of trial court by inquiring with regard to proposition of law and in that question asked by judge overcame such latter objection and properly focused on potential juror prejudice. *J. C. Davis v. United States* (D.C. App. 1974, 315 A. 2d 157).

§ 22-3502. Sodomy.

NOTES TO DECISIONS

Bill of particulars

Government delinquency in failing to provide accused with bill of particulars was harmless error where complete and formal discovery was afforded and where there was no indication that defense counsel was surprised by trial evidence or was denied necessary information which would have been contained within a bill. *J. C. Davis v. United States* (D.C. App. 1974, 315 A. 2d 157).

Constitutionality

Statute which proscribes solicitation for the purpose of committing sodomy, defined as taking into one's mouth or anus the sexual organ of any other person, does not violate constitutional guarantee of equal protection on its face by prohibiting acts between either two men or a man and a woman but not between two women. *United States v. M. Cozart* (D.C. App. 1974, 321 A. 2d 342).

Defendant who was charged with keeping a bawdy or disorderly house, specifically a commercial establishment resorted to for homosexual activities, had no standing to challenge constitutionality of statutory proscription against sodomy on theory that statute was overbroad in that it could be applied to conduct within private abode between those in a familial relationship as defendant was not himself within the class whose alleged right of privacy was affected by application of the statute. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Construction

Cunnilingus is a sodomitic act within purview of statute which defines such act as taking into one's mouth or anus the sexual organ of any other person. *United States v. M. Cozart* (D.C. App. 1974, 321 A. 2d 342).

Discovery

Refusal, in criminal prosecution in which accused was convicted of sodomy, taking indecent liberties with a minor and assault with a deadly weapon and in which three potential government witnesses were of tender age, to grant accused discovery of names and addresses of government witnesses was not abuse of discretion. *J. C. Davis v. United States* (D.C. App. 1974, 315 A. 2d 157).

Refusal to grant accused access to complaining witness' subpoenaed school records, which reflected no prior homosexual or other serious behavioral problems, was not reversible error. *Id.*

Discriminatory enforcement

Evidence which showed that while some women solicited each other for sodomitic acts, only men were arrested for homosexual solicitation under statute which made solicitation for sodomitic acts a crime, where there was no indication as to whether lesbian solicitation was known to the police, showed no more than a failure to prosecute others because of a lack of knowledge and did not show discriminatory enforcement. *United States v. M. Cozart* (D.C. App. 1974, 321 A. 2d 342).

Insanity defense

Where defendant, indicted for sodomy, assault with dangerous weapon and mayhem, neither raised defense of insanity prior to return of jury verdict of guilty nor

brought to court's attention prior imprisonment for sex-related crime or attempted suicide while in prison and confinement there for psychiatric treatment, defendant had not been improperly deprived of defense of insanity during trial. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Privacy rights

Participants in a sodomitic act performed in a public wooded area cannot invoke a right to privacy even though they may have believed that because of the hour of the night and the density of the foliage, their behavior would go unobserved. *United States v. C. A. Buck* (D.C. App. 1975, 342 A. 2d 48).

Where membership in "Health Club" could be obtained by public with minimum formality and for a modest fee, club was public in nature; thus, whether or not club's cubicles, in which sodomitic activity was alleged to have taken place between consenting adults, were secluded, such adults did not have the right to or reasonable expectation of privacy which would render the sodomitic activity outside proscription of sodomy statute. *United States v. J. L. McKean et al.* (D.C. App. 1975, 338 A. 2d 439).

Acts of sodomy which allegedly occurred at "homosexual health club" were not protected by any recognized right to privacy as the acts occurred not in a private abode but on premises of a commercial establishment open to the public. *D. G. Harris v. United States* (D.C. App. 1974, 315 A. 2d 569; rev'g 293 A. 2d 851).

Sentence

Notwithstanding claim that failure to grant credit for time served in pretrial and presentence confinement was a violation of petitioner's guarantee to equal protection as well as the law and public policy of the District of Columbia, conclusive presumption arose that credit was given so as to preclude petitioner from obtaining relief, where petitioner was sentenced to two concurrent three to 10-year sentences on counts charging sodomy and an indecent act on a minor child, although petitioner faced a possible 20-year sentence on sodomy count in that victim was under 16 years of age. *L. A. Arrington v. A. McGruder, et al.* (1974, 490 F. 2d 795, 160 U.S. App. D.C. 227).

Sentence of ten years' imprisonment, and refusal to commit defendant to institution for treatment of sexual psychopathy, did not constitute cruel and unusual punishment of defendant after conviction of sodomy and assault with dangerous weapon. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Voir dire questions

Refusal, in prosecution for sodomy and taking indecent liberties with a child, to permit accused to ask on voir dire "Is there anyone here who feels" that "sexual acts with a minor are either immoral, illegal or indecent" was not error, in that question was inherently vague and invaded function of trial court by inquiring with regard to proposition of law and in that question asked by judge overcame such latter objection and properly focused on potential juror prejudice. *J. C. Davis v. United States* (D.C. App. 1974, 315 A.2d 157).

In prosecution for sodomy, refusal to permit accused to ask on voir dire "Do any of you ladies and gentlemen have any question with the theory of law that the penis must penetrate the anus" was not error, in that question focused on question of law for court and could have confused jurors as to their duty to follow court's instructions on the law. *Id.*

§ 22-3508. Hearing—Commitment to Saint Elizabeths Hospital.

NOTES TO DECISIONS

Confinement

Where psychiatric reports, filed with court after defendant's conviction, although denominating defendant a sexual psychopath, also stated that defendant was suffering from a mental disorder and that the alleged offenses, if committed by him, were products of his illness, trial court correctly determined that defendant was not at that time eligible for commitment as sexual psychopath. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Chapter 36.—IMPLEMENTS OF CRIME

§ 22-3601. Possession of implements of crime—Penalty.

NOTES TO DECISIONS

Defense of addiction

Even if Court of Appeals is not statutorily precluded from permitting criminal defendant charged with possession of heroin for personal use or possession of narcotics paraphernalia to raise affirmative defense of lack of common-law criminal responsibility due to heroin addiction, Court would not upset balance of multipronged effort to reduce heroin addiction through law enforcement and treatment. *L. F. Gorham v. United States* (D.C. App. 1975, 339 A. 2d 401).

Congress' avowed intent to prosecute and convict drug users where indicated for all crime nullifies authority of Court of Appeals to formulate a new common-law rule of criminal responsibility which would insulate those same drug users from criminal punishment. *Id.*

Decision permitting a defendant charged with possession of narcotics and narcotics paraphernalia to raise affirmative defense that he lacked capacity to refrain from using narcotics by reason of drug addiction cannot be rested on trial court record which does not disclose basis for expert witness' conclusion that defendant had an overwhelming compulsion psychologically to use heroin and there was no showing whether finding of addiction related to criminal responsibility or only to habitual use. *W. R. Franklin v. United States* (D.C. App. 1975, 339 A. 2d 398).

Evidence—Admissibility

Where officers, when they arrived to execute search warrant, expected another person to be residing at address, and instead discovered that premises were occupied by defendant, who was not then there, and when defendant arrived he was asked to accompany officers to a bedroom, and there he was confronted with narcotics and paraphernalia and asked if he recognized the items and if they were his, there was no custodial interrogation of kind limited in Miranda decision, and inculpatory statements made by defendant were admissible. *J. B. N. Tyler v. United States* (D.C. App. 1972, 298 A. 2d 224).

— Sufficiency

Evidence sustained conviction of possession of narcotics paraphernalia, even though no traces of heroin were found in defendant's department, in which substances shown to be used in "cutting" and injecting heroin were found. *C. E. Rosser v. United States* (D.C. App. 1974, 313 A. 2d 876).

In prosecution for possession of narcotics paraphernalia and possession of dangerous drug, desoxyn, government established unbroken chain of custody as matter of reasonable probability, in view of testimony showing that envelopes had not been tampered with and sufficiently explaining any reason for delay in delivery. *Id.*

Defendant's possession of a small wooden pipe, without further evidence as to its shape and size and absent evidence as to nature and significance of marijuana residue in pipe, did not have the "sinister" implication that possession of the "implements" and "tools" of a crime raises and was not sufficient to support conviction of possessing implement of crime, to wit, narcotics paraphernalia. *K. L. Williams v. United States* (D.C. App. 1973, 304 A. 2d 287).

— Suppression

Failure of trial court to consider tardy oral motion to suppress evidence did not vitiate conviction where court permitted counsel to develop point respecting validity of seizure and there was no showing that seizure was invalid. *G. F. Thompson v. United States* (D.C. App. 1973, 307 A. 2d 764).

Instruments, tools, or implements

Lactose, dextrose, quinine and gelatin capsules, even though possessing special properties for providing bulk to heroin, were not "instruments," "tools" or "implements" within statute prohibiting possessions of any instrument, tool or other implement which is usually employed or may reasonably be employed in the commission of any crime, and possession of large quantities of such materials by owner of retail drugstore was not a criminal

act under statute. *R. P. Rosenberg v. United States* (D.C. App. 1972, 297 A. 2d 763).

Intent

Proof of intent to possess narcotics paraphernalia may be inferred from possession of "sinister" items. *C. E. Rosser v. United States* (D.C. App. 1974, 313 A. 2d 876).

Probable cause

Where a concededly reliable informer gave tip based on personal knowledge which described defendant in great detail, and he gave defendant's alias and his present location and before arrest officers were able to corroborate the informant's tip in every detail with the exception of actual possession of narcotics, probable cause was established and narcotics and implement seized from defendant at time of arrest did not need to be suppressed. *R. Banks v. United States* (D.C. App. 1973, 305 A. 2d 256).

Officer's observations of defendant, who was standing beside sink in his employer's restroom and appeared startled upon seeing policeman, who had entered in order to use the restroom, of defendant's freezing against the wall and of coin purse located on sink and similar to those in which officer had found narcotics in the past did not constitute probable cause for officer, who admitted that he had no reason to believe a crime was being committed when he looked into coin purse, to arrest defendant prior to the search, and search, which revealed narcotics paraphernalia and heroin, was therefore invalid. *L. D. McWilliams v. United States* (D.C. App. 1972, 298 A. 2d 38).

Search and seizure

Where officers making routine check, at hotel owner's invitation, noticed readily apparent and accessible crack in door of guest room, officers' act of looking through crack was not an unreasonable search, and narcotics paraphernalia observed through crack in door and in officers' plain view provided officers with probable cause for ensuing rooftop surveillance and subsequent arrests. *H. L. Borum v. United States* (D.C. App. 1974, 318 A. 2d 590).

Where officers making routine check, at hotel owner's invitation, noticed readily apparent and accessible crack in door of guest room and looked through crack and observed narcotics paraphernalia and defendant and others, officers' warrantless entry into room was justified by exigencies of situation. *Id.*

If narcotics paraphernalia was visible from doorway which was open when officers knocked, officer had right to seize it under the plain view doctrine. *J. E. Wheeler v. United States* (D.C. App. 1973, 300 A. 2d 713).

Where police officer who had heard radio broadcast stating that three subjects were using narcotics in automobile parked at rear of warehouse went to the location and saw three persons seated in automobile matching description which had been broadcast, officer had justification for further affirmative action and his determination to identify himself as police officer and open the car's door simultaneously, while directing the occupants to get out, was permissible, and upon observing bottle-top cooker and full syringe on floor of the car, seizure of the evidence and arrest of the subjects became appropriate and there was no violation of constitutional right to be protected against unreasonable search and seizure. *United States v. E. Mitchell* (D.C. App. 1973, 299 A. 2d 540).

Where police officer was told by another that defendant, whom officer had questioned, had a syringe under wig, officer's momentary stopping of defendant, inquiry about wig, and request to defendant to remove her hat were reasonable, and defendant's denial of wearing a wig and its obvious presence furnished independent observation and corroboration which gave rise to a reasonable basis to arrest defendant and seize contents of her hand, which she had removed from beneath wig and which contained syringe and a bag of methadone, and to seize tinfoil pack, which apparently contained heroin, from starch box from which defendant began to eat at police station. *United States v. S. P. Oliver* (D.C. App. 1972, 297 A. 2d 778).

TITLE 23.—CRIMINAL PROCEDURE

This title was enacted by Pub. L. 91-358, Title II, § 210(a), July 29, 1970, 84 Stat. 604

Chapter 1.—GENERAL PROVISIONS

§ 23-101. Conduct of prosecutions

CROSS REFERENCE

Representation of indigents, see §§ 2-2222, 11-2601.

NOTES TO DECISIONS

Certification

Question of whether corporation counsel or United States attorney should conduct proceedings charging juvenile with act of delinquency was not properly certifiable since juvenile was not involved in criminal prosecution. *In the Matter of M. W. F.* (D.C. App. 1973, 312 A. 2d 302).

Construction

The Court of Appeals has duty to make every effort to reconcile allegedly conflicting statutes and to give effect to language and intent of both, as long as doing so does not deprive one of statutes of its essential meaning. *District of Columbia v. R. E. Smith et ano.* (D.C. App. 1974, 329 A. 2d 128).

Prosecution by Corporation Counsel

Corporation Counsel, rather than United States attorney, was appropriate authority for prosecution of defendants for tampering with a parked vehicle in violation of police regulations of the District of Columbia. *District of Columbia v. R. E. Smith et ano.* (D.C. App. 1974, 329 A. 2d 128).

Statute, which provides that Corporation Counsel shall conduct prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in nature of police or municipal regulations, where maximum authority to the Corporation Counsel as to all municipal ordinances and regulations, punishment is a fine only, or imprisonment not exceeding one year, gives prosecutorial irrespective of the prescribed punishment. *Id.*

§ 23-103. Statements prior to sentence

NOTES TO DECISIONS

Plea bargaining

Where Government as part of plea bargaining only agreed to waive its statutory right of allocution at time of imposing of sentence for burglary, defendant did not have right to reasonably expect that Government's agreement not to allocute would extend to a hearing on his subsequent request that the imposed sentence be reduced and Government was entitled to submit information in opposition to motion to reduce. *M. L. Braxton v. United States* (D.C. App. 1974, 328 A. 2d 385).

Purpose

Provisions of this section that "at any time when the defendant or his counsel addresses the court on the sentence to be imposed * * *" prosecuting attorney may address court as to sentence was intended to prohibit ex parte representations by the defense counsel to trial judge concerning sentencing and to permit prosecutor to rebut defendant's evidence of mitigating factors in sentencing or to present his recommendations on sentencing and does not prohibit government from allocuting as to sentencing even if defendant chooses not to make a statement. *W. N. Quarles v. United States* (D.C. App. 1975, 349 A. 2d 690; cert. denied 96 S. Ct. 2169, — U.S. —).

§ 23-104. Appeals by United States and District of Columbia

NOTES TO DECISIONS

Appeal by District of Columbia

Government's appeal from order suppressing confessions of juvenile who was alleged to be delinquent was

required to be filed within ten-day period provided for appeals in criminal cases rather than within the 30-day period provided for appeals of civil cases. *District of Columbia v. M. A. C.* (D.C. App. 1974, 328 A. 2d 375).

Appeal by United States

Motions judge erred in dismissing prosecutions for possession of narcotics with prejudice for want of prosecution after arresting officer failed to appear at hearing on accused's motion to suppress following dismissal of prior prosecution for want of prosecution because of officer's failure to appear at trial where accused made no proffer of evidence that he had been prejudiced by delay and advanced no claim that he had been denied a speedy trial and less than one year had elapsed between date of arrest and hearing on motion to suppress. *United States v. R. W. Mack* (D.C. App. 1972, 298 A. 2d 509).

Dismissal of information for want of prosecution, after denial of government's request for a continuance, sought to permit an appeal from suppression order, because of failure of government to comply with rules requiring written motion for continuance, service on opposite party, a hearing and request for continuance at least two days before trial, could not be entered to defeat jurisdiction of District of Columbia Court of Appeals on a timely appeal taken pursuant to statute allowing appeal by government from suppression order. *United States v. S. P. Oliver* (D.C. App. 1972, 297 A. 2d 778).

Where order of suppression of evidence, if lawful, effectively terminated the prosecution, trial date became academic, rule requiring written motion for a continuance and request for a continuance at least two days before trial became subordinate to government's statutory right to appeal during time when appeal could be noted and oral continuance request by government to permit an appeal from suppression order could not justify dismissal order on ground of government's failure to comply with rules. *Id.*

Where underlying rationale for dismissal of information was an erroneous belief that defendant would be incarcerated because of government's appeal from suppression order and a preoccupying disagreement with government's announced determination to proceed with the appeal, order of dismissal was without authority and void. *Id.*

Appealable orders

Trial court's order that the United States would not be permitted to call any person as a witness in criminal case unless, with respect to that witness, the government had fully complied with a prior order that the United States furnish pretrial to defense counsel the arrest and criminal records of prosecution witnesses is final and appealable where the government refused to comply with the order to produce and thus the order precluding the calling of the witnesses effectively terminated the prosecution. *United States v. W. C. Ingram et ano.* (D.C. App. 1975, 337 A.2d 488; cert. denied 96 S. Ct. 793, 423 U.S. 1058).

Dismissal of an information without prejudice is an appealable order. *United States v. T. L. Cummings* (D.C. App. 1973, 301 A. 2d 229).

That dismissal of indictment without prejudice created no bar to seeking a new indictment did not render dismissal order nonreviewable. *United States v. M. M. Hector* (D.C. App. 1972, 298 A. 2d 504).

Construction

Words "charged with a criminal offense" as used in this section providing that District of Columbia may appeal a suppression order entered before trial of a person charged with a criminal offense includes the term "delinquent act." *District of Columbia v. M. E. H.* (D.C. App. 1973, 312 A. 2d 561).

Evidence—Suppression

Where officer performed valid investigative stop of automobile whose driver was suspected of carrying loaded 45 automatic and continued to detain automobile when driver volunteered that he had toy gun in trunk, and where second officer then saw real gun through open car door and seized it, driver's right to be free from unreasonable seizure of person was not violated. *United States v. F. R. Cousar* (D.C. App. 1975, 349 A. 2d 454).

District of Columbia had right to appeal order of Family Division of Superior Court, entered at prehearing stage of juvenile delinquency proceeding, suppressing as evidence unregistered pistol and suppressing certain statements made by subject child prior to his arrest. *District of Columbia v. M. E. H.* (D.C. App. 1973, 312 A. 2d 561).

Motion to suppress evidence

Where pretrial motion to suppress has been denied and, realistically, only available issue in "possession of contraband" case is search or seizure, approved procedure is to stipulate the facts as alleged in information and have court render verdict thereon in order to preserve Fourth Amendment issue on appeal. *United States v. J. L. Allen* (D.C. App. 1975, 337 A. 2d 512).

Trial court erred in determining sua sponte to rehear motion to suppress, which had previously been considered and denied pretrial, where no newly discovered grounds were presented. *Id.*

First trial judge's refusal to permit defense counsel to be heard as to whether there was valid basis for excusing him from normal requirement of filing motion to suppress evidence prior to trial was harmless where first judge did not again reach case and second trial judge, in refusing to rehear the motion to suppress independently concluded that situation did not present an appropriate exception to the requirement. *C. C. Anderson v. United States* (D.C. App. 1974, 326 A. 2d 807).

Trial court's refusal to hear motion to suppress evidence filed at time of trial was within his discretion where defense counsel did not claim that motion was based upon newly learned information but acknowledged that belated effort to move to suppress was tactical response to nonappearance of two witnesses *Id.*

Where defendant, charged with petit larceny, made no pretrial motion to suppress allegedly stolen notebooks which were introduced at trial without objection, any objection to evidence was waived by defendant who claimed on appeal that the notebooks should have been suppressed as having been seized illegally. *T. Grennett v. United States* (D.C. App. 1974, 318 A. 2d 589).

When pretrial motion to suppress has been heard and decided as required by the Superior Court Criminal Rule in District of Columbia Code, that decision becomes law of the case and only if new grounds, including new facts, are advanced which defendant could not reasonably have been aware of may a trial judge entertain a renewed motion to suppress. *J. E. Wheeler v. United States* (D.C. App. 1973, 300 A. 2d 713).

Where, at time motions to suppress were heard, government was not obligated to provide defense with police department forms indicating that narcotics paraphernalia had not been seen until after arresting officers had entered defendants' room, but forms because available at trial in which officer testified he had observed paraphernalia before entering room, the inconsistency constituted ground for new suppression hearing and, in absence of lower court ruling that forms were not in conflict with testimony and in light of other inconsistencies in officer's testimony and critical importance of officer's credibility, remand for fresh determination of suppression issue was necessary. *Id.*

Trial court's grant of suppression motion insofar as it related to property not covered by warrant, while deferring decision on question of validity of warrant on ground that criminal prosecution had not yet been instituted, was improper; court should have determined all of motion. *United States v. G. A. Farmer* (D.C. App. 1972, 297 A. 2d 783).

§ 23-110. Remedies on motion attacking sentence**CROSS REFERENCE**

Representation of indigents, see §§ 2-2222, 11-2601.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2601.

NOTES TO DECISIONS**Construction**

Subsection of this section providing that application for writ of habeas corpus in behalf of prisoner who is authorized to apply for relief by motion pursuant to the section shall not be entertained by the Superior Court or by any federal court if it appears the applicant has failed to make motion for relief under the section or that Superior Court has denied him relief is not intended to and does not affect the jurisdiction of United States District Court for the District of Columbia to entertain postconviction habeas petitions from local prisons but rather is an exhaustion of remedies statute, requiring initial submission of claims to the local courts and marking the terminal point for proceedings in the local court system. *R. F. Palmore v. Superior Court of the District of Columbia et al.* (1975, 515 F.2d 1294, 169 U.S. App. D.C. 323; cert. granted 96 S. Ct. 1101, 424 U.S. 907).

This section relating to entertainment of application for writ of habeas corpus on behalf of prisoner authorized to apply for relief from judgment by motion does not affect jurisdiction of federal district court under federal statutes relating to habeas corpus and operates only as an exhaustion of remedies provision. *J. C. Pressley v. C. L. Swain* (1975, 515 F. 2d 1290, 169 U.S. App. D.C. 319; cert. granted 96 S. Ct. 1101, 424 U.S. 907).

Effective assistance of counsel

If in a collateral attack based on allegations of ineffectiveness of appointed counsel the trial court concludes that a hearing should be held a non-Public Defender Service attorney should be appointed if the original trial was with that agency. *W. J. Angarano v. United States* (D.C. App. 1974, 329 A. 2d 453).

An adequate specific showing that prima facie ineffectiveness exists is required before the District of Columbia Court of Appeals will grant the Public Defender Service leave to withdraw and appoint new counsel to determine whether to assert such an issue in the reviewing court or to seek collateral relief in the trial court. *Id.*

Exhaustion of remedies

Habeas corpus petitioner who had been convicted in Superior Court for carrying a pistol without a license and who had presented Fourth Amendment claim by pretrial motion to suppress evidence and again on appeal from conviction to the District of Columbia Court of Appeals had exhausted his local remedies despite not having made a motion for postconviction relief under this section. *R. F. Palmore v. Superior Court of the District of Columbia et al.* (1975, 515 F.2d 1294, 169 U.S. App. D.C. 323; cert. granted 96 S. Ct. 1101, 424 U.S. 907).

Although District of Columbia defendant's pro se collateral attack, which he styled as motions for new trial, were clearly untimely under rule, where government in opposing motions stated that even treating motions as ones to vacate sentence under statute they were utterly meritless and motions were considered on their merits on appeal to the District of Columbia Court of Appeals defendant had exhausted local remedies and defendant was entitled to petition for federal writ of habeas corpus. *J. C. Pressley v. C. L. Swain* (1975, 515 F. 2d 1290, 169 U.S. App. D.C. 319; cert. granted 96 S. Ct. 1101, 424 U.S. 907).

Hearing

It was not error for trial court to deny, without a hearing, defendant's petition for postconviction relief based on alleged ineffectiveness of counsel where the motion was vague and conclusory with no facial validity, where there was no claim of innocence or claim that plea of guilty was not entered voluntarily, and where defendant's attorney had filed numerous pretrial motions on defendant's behalf. *J. V. Bettis v. United States* (D.C. App. 1974, 325 A. 2d 190).

§ 23-111. Proceedings to establish previous convictions**CROSS REFERENCE**

Increased sentences for previous offenders, see §§ 22-104, 22-104a.

NOTES TO DECISIONS

Challenge

A defendant can challenge prior convictions, sought to be used to enhance sentence under recidivist statute, at any time before sentencing. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

Construction

Requirement that before court can sentence individuals subject to increased punishment on basis of information as to prior convictions the defendant must affirm that he has been previously convicted as alleged is mandatory and requires an affirmative statement by the defendant and was not satisfied by a concession by defense counsel. *United States v. J. F. Bolden* (1975, 514 F.2d 1301, 169 U.S. App. D.C. 60).

Provision of recidivist statute that failure of defendant to respond to pretrial information or Notice of Additional Penalties shall constitute a waiver of any challenge the defendant may have to prior convictions does not mean there is a waiver on failure to file a written response to the information; it is necessary only that the challenge be raised by response to the information before an increased sentence is imposed. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

Provision of recidivist statute that, on defendant's failure to file written response to Notice of Additional Penalties, the court shall proceed to impose sentence as provided by law means that on such failure the court shall make inquiry whether defendant affirms or denies previous convictions, alleged in the information and shall inform defendant that any challenge not made before sentence is imposed may not thereafter be raised to attack sentence; such requirements are mandatory and cannot be avoided by merely granting to defendant, whether represented by counsel or not, an opportunity to say something to the court. *Id.*

Notice

Failure of defendant to file written response to service of notice or prior offense to be used to enhance punishment did not constitute waiver of her right to dispute convictions alleged in Notice of Additional Penalties. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S.Ct. 846, 414 U.S. 1114).

Statutory procedure for filing a written response to Notice of Additional Penalties is mandatory when possible challenges to prior convictions, sought to enhance punishment, are available; failure to follow that procedure when challenges are known or should be known could be a violation of counsel's duty to his client. *Id.*

Procedure

Trial judge's failure to inquire of defendant whether he affirmed or denied previous convictions contained in government's information invalidates sentence for carrying a pistol without a license imposed under the recidivist sentencing procedure. *L. Irby v. United States* (D.C. App. 1975, 342 A. 2d 33).

An enhanced sentence could not be imposed upon defendant, found guilty of grand larceny, where the information as to the prior felony convictions was not filed with clerk of court prior to trial as required by this section. *J. A. Bond v. United States* (D.C. App. 1973, 310 A. 2d 221).

Sentence

A sentence under the recidivist statute is not a part of the offense itself; it is the possible punishment for the latter which determines whether the prosecution must be by indictment; recidivist statute comes into play after the trial and after accused has been found guilty and proceedings thereunder do not involve inquiry into guilt or innocence. *E. Smith v. United States* (D.C. App. 1973, 304 A. 2d 28; cert. denied 94 S. Ct. 846, 414 U.S. 1114).

Where, at sentencing proceeding, trial court neglected to clearly inform defendant of prior convictions allegedly warranting enhancement of punishment on conviction of petit larceny or to inquire whether defendant affirmed or denied each conviction and court merely inquired of defendant regarding a prior petit larceny conviction not listed in pretrial information, which conviction she affirmed, 18 months' sentence was required to be set aside

and case remanded for resentencing, notwithstanding that defendant had failed to file written answer to information. *Id.*

§ 23-112. Consecutive and concurrent sentences

NOTES TO DECISIONS

Consecutive sentences

Test is whether offenses for which sentences are levied to run consecutively are separate criminal acts. *S. L. Banks v. United States* (D.C. App. 1973, 307 A. 2d 787).

Where there was no indication that sentence being served by defendant pursuant to conviction in federal district court arose out of same occurrence or acts as subsequent burglary and petit larceny convictions, and Congress intended sentences to run consecutively unless specified otherwise, denial of defendant's motion to have consecutive sentences on burglary and petit larceny convictions run concurrently with federal district court conviction was not abuse of discretion. *Id.*

Separate offenses

Imposition of consecutive sentences for assault with a dangerous weapon and carrying a dangerous weapon is proper, notwithstanding that offenses arose out of the same transaction, since offense of carrying a dangerous weapon requires proof that the weapon was unlicensed while offense of assault with a dangerous weapon does not. *R. S. Hammond v. United States* (D.C. App. 1975, 345 A. 2d 140).

In prosecution for armed robbery and for assault with a dangerous weapon, trial court did not erroneously permit jury to return a separate verdict on assault with a dangerous weapon charge where evidence disclosed that after armed robbery of cash register of store defendant forced victim at gunpoint to walk to rear of store where she was searched and on leaving defendant warned victim about possibility of being shot if she came out before defendant got out of store. *G. W. Bates v. United States* (D.C. App. 1974, 327 A. 2d 542).

Premeditated murder and felony murder were not separate "offenses" within the meaning of this section statute relating to sentences which are deemed to run consecutive to each other. *United States v. R. L. Ammidown* (1973, 497 F. 2d 615, 162 U.S. App. D.C. 28).

Chapter 3.—INDICTMENTS AND INFORMATIONS

SUBCHAPTER I.—GENERAL PROVISIONS

§ 23-301. Prosecution by indictment or information

NOTES TO DECISIONS

Dismissal

Where defendant did not assert that indictment was defective but court granted motion to dismiss, filed more than four months after preliminary hearing, solely on ground that judge handling hearing abused discretion in denying defendant's request to compel testimony of complaining witness and that trial judge at status hearing erred in denying second request for such testimony from witness who died after status hearing and where dismissal was taken as alternative to ordering preliminary hearing and as device to get appellate resolution of case, dismissal of indictment is reversible error. *United States v. W. B. Davis* (D.C. App. 1975, 330 A.2d 751).

Although all counsel should obey, whenever possible, rule providing for calendar management, dismissal of indictment without prejudice for defense counsel's failure to give required two-day notice of unpreparedness before trial, and for government's unpreparedness at trial as result of defense counsel's telling prosecutor day before trial that defense counsel was going to request continuance, was improper. *United States v. J. B. Douglas* (D.C. App. 1974, 330 A. 2d 243).

Grand jury proceedings—Subpena

Grand jury subpena duces tecum seeking production of attendance records of murder suspect's employer for six-day period bridging the day of the killing was not unreasonable or oppressive, and Superior Court's quashing the subpena as unreasonable and oppressive constitutes a usurpation of power. *United States v. The Honorable*

H. C. Moultrie, Associate Judge, etc. (D.C. App. 1975, 340 A.2d 828).

Indictment

Pendency of grand jury indictment charging assault with a dangerous weapon did not prohibit a second grand jury from considering and returning indictment charging not only the same count of assault with a dangerous weapon but the additional count of carrying a dangerous weapon, regardless of whether prior grand jury refused to return a bill charging the offense of carrying a dangerous weapon or simply did not consider such offense. *United States v. C. Johnson* (D.C. App. 1974, 328 A. 2d 769).

Though denominated a misdemeanor by § 22-1506, prescribed penalty of up to five years imprisonment made offense of "three-card monte and confidence games" prosecutable only by indictment. *United States v. D. L. Brown et ano.* (D.C. App. 1973, 309 A. 2d 256).

SUBCHAPTER II.—JOINDER

§ 23-311. Joinder of offenses and of defendants

NOTES TO DECISIONS

Joinder—Defendants

Joinder of defendants, one charged with a misdemeanor and the other with a felony in connection with carrying a deadly weapon, could be accomplished by filing an information against the former and, upon indictment of his codefendant, moving for joinder. *T. Freeman v. Honorable D. S. Smith* (D.C. App. 1973, 301 A. 2d 217).

—Offenses

The Government may properly charge in the same indictment offenses against both the federal bank (savings and loan) robbery statute and the local armed robbery statute, provided defendant is not ultimately sentenced under two statutes proscribing essentially the same offense. *United States v. R. Shepard* (1975, 515 F. 2d 1324, 169 U.S. App. D.C. 353).

Separate counts

Although defendant can properly be charged with both voluntary manslaughter and involuntary manslaughter in same indictment, duplicitous count is improper in that, upon conviction, it would not be clear to which crime guilty verdict referred and thus what penalty should be imposed, it would hamper both judge and jury in considering evidence, general verdict of guilty would not reveal whether defendant was unanimously found guilty of all offenses charged, right of protection against double jeopardy might be violated and it might deny right to notice of nature and cause of accusation. *United States v. D. Bradford* (D.C. App. 1975, 344 A. 2d 208).

§ 23-312. Joinder of indictments or informations for trial

NOTES TO DECISIONS

Plain error

Where defendant himself moved for joinder of indictments, where defendant did not object to admission of evidence of other crimes at trial for strategic reasons in order to prove defense of insanity, where much of evidence of other crimes would have been introduced regardless of joinder, and where possibility of prejudice was not enlarged by factor of joinder alone, trial court's failure to order a severance, sua sponte, was not plain error requiring reversal. *M. Bell v. United States* (D.C. App. 1975, 332 A. 2d 351).

Chapter 5.—WARRANTS AND ARRESTS

SUBCHAPTER I.—DEFINITIONS

Sec.

23-501. Definitions.

SUBCHAPTER II.—SEARCH WARRANTS

23-521. Nature and issuance of search warrants.

23-522. Applications for search warrants.

23-523. Time of execution of search warrants.

23-524. Execution of search warrants.

23-525. Disposition of property.

SUBCHAPTER III.—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

Sec.

23-541. Definitions.

23-542. Interception, disclosure, and use of wire or oral communications prohibited.

23-543. Possession, sale, distribution, manufacture, assembly, and advertising of wire or oral communication intercepting devices prohibited.

23-544. Confiscation of wire or oral communication intercepting devices.

23-545.¹ Immunity of witnesses.

23-546. Applications for authorization or approval of interception of wire or oral communications.

23-547. Procedure for authorization or approval of interception of wire or oral communications.

23-548. Additional procedure for approval of interception of wire or oral communications.

23-549. Maintenance and custody of records.

23-550. Inventory.

23-551. Procedure for disclosure and suppression of intercepted wire or oral communications.

23-552. Government appeals.

23-553. Authorization for disclosure and use of intercepted wire or oral communications.

23-554. Authorization for recovery of civil damages.

23-555. Reports concerning intercepted wire or oral communications.

23-556. Relation to Federal law on wire interception and interception of oral communications.

SUBCHAPTER IV.—ARREST WARRANT AND SUMMONS

23-561. Issuance, form, and contents.

23-562. Execution and return.

23-563. Territorial and other limits.

SUBCHAPTER V.—ARREST WITHOUT WARRANT

23-581. Arrests without warrant by law enforcement officers.

23-582. Arrests without warrant by other persons.

AMENDMENT

1974—Section 4(a) of Act Oct. 26, 1974, Pub. L. 93-481, 88 Stat. 1455, as amended Jan. 3, 1975, Pub. L. 93-635, § 16, 88 Stat. 2178, provided in part that the analysis of chapter 5 of title 23 of the District of Columbia Code is amended by striking out the item relating to subchapter VI.

SUBCHAPTER II.—SEARCH WARRANTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 23-501.

§ 23-521. Nature and issuance of search warrants

* * * * *

(f) A search warrant shall contain—

(1) the name of the issuing court, the name and signature of the issuing judicial officer, and the date of issuance;

(2) if the warrant is addressed to a specific officer, the name of that officer, otherwise, the classifications of officers to whom the warrant is addressed;

(3) a designation of the premises, vehicles, objects, or persons to be searched, sufficient for certainty of identification;

(4) a description of the property whose seizure is the object of the warrant;

(5) a direction that the warrant be executed during the hours of daylight or, where the judicial officers has found cause therefor, including one of the grounds set forth in section 23-522(c) (1), an authorization for execution at any time of day or night; and

¹ Section 252 of Act Oct. 15, 1970, Pub. L. 91-452, repealed § 23-545 without amending the chapter analysis.

(6) a direction that the warrant and an inventory of any property seized pursuant thereto be returned to the court on the next court day after its execution.

(As amended Oct. 26, 1974, Pub. L. 93-481, § 4(b), 88 Stat. 1455.)

AMENDMENT

1974—Act Oct. 26, 1974, Pub. L. 93-481, amended subsec. (f) by inserting "and" at the end of par. (5); by striking out par. (6) relating to "no knock" entry and search; and redesignating par. (7) as par. (6).

NOTES TO DECISIONS

Construction

General provision relating to search warrants found in the District of Columbia Code and then incorporated in similar form into the new Superior Court Rules was intended to be a counterpart to comparable Federal Rules of Criminal Procedure. *L. Gooding v. United States* (1974, 94 S.Ct. 1780, 416 U.S. 430; aff'g 477 F.2d 428, 155 U.S. App. D.C. 359).

Federal offenses

Operative facts surrounding search for narcotics indicated that standards for issuance of search warrant were governed by federal statute rather than local laws of District of Columbia, where, inter alia, a United States attorney filed warrant application with a federal magistrate, alleging violations of United States Code for which defendant was later indicted, and neither application nor supporting affidavits contained any mention of local narcotics laws; failure of Congress to include in federal statute a special provision authorizing District of Columbia police officers to obtain search warrants for investigating federal offenses could not be taken as a deliberate exclusion in view of the overall statutory framework. *L. Gooding v. United States* (1974, 94 S. Ct. 1780, 416 U.S. 430; aff'g 477 F.2d 428, 155 U.S. App. D.C. 259).

Nighttime searches

Federal statute providing that a search warrant relating to offenses involving controlled substances may be served at any time of day or night if a judge or United States Magistrate is satisfied that probable cause exists for warrant and for its service at such time provides relevant tests by which to judge validity of search warrants executed at nighttime in connection with violations of federal narcotics laws, rather than District of Columbia statutes or Federal Rule of Criminal Procedure. *United States v. L. Gooding* (1973, 477 F. 2d 428, 155 U.S. App. D.C. 259, rev'g 328 F. Supp. 1005; aff'd 94 S. Ct. 1780, 416 U.S. 430).

Scope of warrant

Where search warrant was issued for apartment on affidavit which recited that within preceding two weeks information had come to police from reliable informant that narcotics were being sold in apartment and that agent had purchased narcotics at apartment, and officers after announcing their purpose heard noise followed by sound of window breaking and upon entry found party attempting to escape through window, search of purse which belonged to defendant who was in apartment and which was sitting on table was proper. *United States v. G. E. Johnson* (1973, 475 F. 2d 977, 154 U.S. App. D.C. 393).

Where search warrant authorized officers to search entire apartment for narcotics, apartment visitor's purse which was sitting on table could properly be searched in pursuit of items for which warrant had issued. *Id.*

Sufficiency of warrant

Warrant for search of premises at designated street address was sufficient to include back room of shop which had formerly had separate entrance on another street and which could be entered only through the apparel shop address. *E. A. Short v. District of Columbia* (D.C. App. 1973, 300 A. 2d 450).

§ 23-522. Applications for search warrants

(c) The application may also contain a request that the search warrant be made executable at any

hour of the day or night upon the ground that there is probable cause to believe that (1) it cannot be executed during the hours of daylight, (2) the property sought is likely to be removed or destroyed if not seized forthwith, or (3) the property sought is not likely to be found except at certain times or in certain circumstances. Any request made pursuant to this subsection must be accompanied and supported by allegations of fact supporting such request. (As amended Oct. 26, 1974, Pub. L. 93-481, § 4(c), 88 Stat. 1455.)

AMENDMENT

1974—Oct. 26, 1974, Pub. L. 93-481, amended subsec. (c) generally, thereby eliminating "no knock" entry and search provisions formerly contained in par. (2) of subsec. (c).

NOTES TO DECISIONS

Affidavit—Sufficiency

Affidavit, which stated that attesting officer watched front door of apartment building, a multistoried structure with many units, after giving informant money to purchase narcotics from defendant rather than watching defendant's door does not, on theory that officer could not attest to informant's entry into defendant's apartment, thereby render search warrant based on such affidavit invalid. *J. T. Jones v. United States* (D.C. App. 1975, 336 A.2d 535; cert. denied 96 S. Ct. 427, 423 U.S. 997).

There was no need to demonstrate, in affidavit in support of a search warrant, reliability of informant who merely aided in initial contact with person from whom agent purchased heroin, where thereafter investigation proceeded independently, and since affidavit contained observations of agent accompanying such person to address respect a purchase of heroin and presence of heroin in premises, affidavit reflected sufficient probable cause to issue search warrant. *J. B. N. Tyler v. United States* (D.C. App. 1972, 298 A. 2d 224).

Alleged fact that there was no evidence to show that person from whom undercover agent purchased heroin obtained the heroin from within defendant's residence because such person was not searched by undercover agent prior to his entry did not render affidavit in support of search warrant inadequate, where affidavit demonstrated that agent's covert status was unknown to person from whom he purchased the heroin and therefore he was in no position to search such person without compromising his status, and there was no reason to assume false dealings. *Id.*

Construction

General provision relating to search warrants found in the District of Columbia Code and then incorporated in similar form into the new Superior Court Rules was intended to be a counterpart to comparable Federal Rules of Criminal Procedure. *L. Gooding v. United States* (1974, 94 S.Ct. 1780, 416 U.S. 430; aff'g 477 F.2d 428, 155 U.S. App. D.C. 259).

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Nighttime searches

Federal statute providing that a search warrant relating to offenses involving controlled substances may be served at any time of day or night if a judge or United States Magistrate is satisfied that probable cause exists

for warrant and for its service at such time provides relevant tests by which to judge validity of search warrants executed at nighttime in connection with violations of federal narcotics laws, rather than District of Columbia statutes or Federal Rule of Criminal Procedure. *United States v. L. Gooding* (1973, 477 F. 2d 428, 155 U.S. App. D.C. 259, rev'g 328 F. Supp. 1005; aff'd 94 S. Ct. 1780, 416 U.S. 430).

Probable cause

In determining whether probable cause exists for magistrate to issue search warrant, so long as magistrate is sufficiently informed of underlying circumstances which justify belief in informer's reliability and underlying circumstances upon which informer concluded that contraband was where he claimed it was, informer's allegations require no independent corroboration. *J. T. Jones v. United States* (D.C. App. 1975, 336 A.2d 535; cert. denied 96 S. Ct. 427, 423 U.S. 997).

§ 23-523. Time of execution of search warrants

NOTES TO DECISIONS

Construction

General provision relating to search warrants found in the District of Columbia Code and then incorporated in similar form into the new Superior Court Rules was intended to be a counterpart to comparable Federal Rules of Criminal Procedure. *L. Gooding v. United States* (1974, 94 S.Ct. 1780, 416 U.S. 430; aff'g 477 F.2d 428, 155 U.S. App. D.C. 259).

Delay

Where warrant authorized search of delicatessen within ten days of date of issuance of warrant for gambling paraphernalia, fact that police permitted eight days to elapse before executing the warrant after receiving tip from informant that people were inside that had numbers slips on them did not render search unlawful. *United States v. J. R. Graves et ano.* (D.C. App. 1974, 315 A. 2d 559).

Execution at night

Federal statute providing that a search warrant relating to offenses involving controlled substances may be served at any time of day or night if a judge or United States Magistrate is satisfied that probable cause exists for warrant and for its service at such time provides relevant tests by which to judge validity of search warrants executed at nighttime in connection with violations of federal narcotics laws, rather than District of Columbia statutes or Federal Rule of Criminal Procedure. *United States v. L. Gooding* (1973, 477 F. 2d 428, 155 U.S. App. D.C. 259, rev'g 328 F. Supp. 1005; aff'd 94 S. Ct. 1780, 416 U.S. 430).

Federal offenses

Operative facts surrounding search for narcotics indicated that standards for issuance of search warrant were governed by federal statute rather than local laws of District of Columbia, where, inter alia, a United States attorney filed warrant application with a federal magistrate, alleging violations of United States Code for which defendant was later indicted, and neither application nor supporting affidavits contained any mention of local narcotics laws; failure of Congress to include in federal statute a special provision authorizing District of Columbia police officers to obtain search warrants for investigating federal offenses could not be taken as a deliberate exclusion in view of the overall statutory framework. *L. Gooding v. United States* (1974, 94 S.Ct. 1780, 416 U.S. 430; aff'g 477 F.2d 428, 155 U.S. App. D.C. 259).

§ 23-524. Execution of search warrants

(a) An officer executing a warrant directing a search of a dwelling house or other building or a vehicle shall execute such warrant in accordance with section 3109 of title 18, United States Code.

* * * * *

(As amended Oct. 26, 1974, Pub. L. 93-481, § 4(d), 88 Stat. 1456.)

AMENDMENT

1974—Act Oct. 26, 1974, Pub. L. 93-481, amended subsec. (a) by substituting "section 3109 of title 18, United States Code" for "section 23-591".

NOTES TO DECISIONS

Motion to suppress evidence

Trial court's grant of suppression motion insofar as it related to property not covered by warrant, while deferring decision on question of validity of warrant on ground that criminal prosecution had not yet been instituted, was improper; court should have determined all of motion. *United States v. G. A. Farmer* (D.C. App. 1972, 297 A. 2d 783).

Search and seizure

Officers executing warrant for search of delicatessen for gambling paraphernalia, having received tip from informant that people were inside that had numbers slips on them, had sufficient grounds to search the five or six persons on the premises when the warrant was executed. *United States v. J. R. Graves et ano.* (D.C. App. 1974, 315 A.2d 559).

Where on executing warrant authorizing search of after-hours club or bar for a "gaming table and other related gambling paraphernalia," police officers knocked twice and announced they were police officers with a search warrant, after hearing someone run away from the door, officers waited approximately 30 seconds and then forced door open and from previous observations police had probable cause to believe that extensive gambling was being carried on, police had sufficient grounds to search the individuals present and tinfoil packet found on in-depth search of an occupant was properly seized and would be admissible in prosecution for possession of heroin; officers had reasonable cause to believe that occupants possessed, concealed and were about to remove or destroy evidence for which they had a search warrant. *United States v. W. Miller* (D.C. App. 1972, 298 A. 2d 34).

SUBCHAPTER III.—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

§ 23-543. Possession, sale, distribution, manufacture, assembly, and advertising of wire or oral communication intercepting devices prohibited

NOTES TO DECISIONS

Plea of guilty

Where prosecution in its opening statement had outlined overwhelming case against defendants, charged with burglary of political party headquarters and illegal electronic surveillance, pleas were accepted only after extraordinarily elaborate procedure, stretching over four days, conducted largely in camera, and involving two competent attorneys, and neither counsel, prosecutor, nor judge exerted the slightest pressure on defendants to induce them to plead guilty, withdrawal of pleas would substantially prejudice legitimate prosecution interests, defendants were granted "use immunity" so that they might testify before grand jury and congressional committees and, at time of plea, defendants had denied employment by government intelligence agencies, defendants would not be entitled, eight months after pleading guilty, to withdraw their pleas because they honestly, though mistakenly, believed that "national security" considerations required their silence. *United States v. B. L. Barker* (1975, 514 F.2d 208, 168 U.S. App. D.C. 312; cert. denied 95 S. Ct. 2420, 421 U.S. 1013).

§ 23-544. Confiscation of wire or oral communication intercepting devices

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 23-547. Procedure for authorization or approval of interception of wire or oral communications

NOTES TO DECISIONS

Construction

This section requiring that wiretap order specify the identity of person, if known, whose communications are to be intercepted does not impose any broader obligation on Government to identify "known" individuals in its wiretap applications than that imposed by provision specifying that applications for wiretap order shall include the identity of the person, if known, who committed, is committing, or is about to commit the offense and whose communications are to be intercepted. *United States v. A. R. Moore, Jr.* (1975, 513 F.2d 485, 168 U.S. App. D.C. 227).

Disclosure of prior applications

Government attorneys who sought authorization for wiretaps of certain individuals in connection with investigation of gambling activities were required to disclose to court fact that prior authorization for interception of communications of one of the persons under investigation had been granted, even though the prior authorization had been in connection with an unrelated narcotics investigation. *United States v. J. A. Bellosi* (1974, 501 F. 2d 833, 163 U.S. App. D.C. 273).

Identification of "known" person

Where Government investigators had probable cause to believe that defendant was a principal involved in gambling offenses under investigation, and also had probable cause to believe defendant would be overheard in conversations transpiring between telephones involved, defendant was a person "known" to be committing criminal offenses within mandate of this section that application for wiretap shall include identity of person, if known, who committed, is committing, or is about to commit offense and whose communications are to be intercepted. *United States v. A. R. Moore, Jr.* (1975, 513 F.2d 485, 168 U.S. App. D.C. 227).

Even though Government investigators had codefendant's full name and address as well as confidential source's information concerning gambling activities of an individual having same first name as codefendant, information available to Government investigators at time of wiretap application and order was insufficient to establish probable cause to believe defendant was implicated in the gambling offenses being investigated and was likely to be intercepted over the target telephones. *Id.*

§ 23-551. Procedure for disclosure and suppression of intercepted wire or oral communications

NOTES TO DECISIONS

Standing

All persons whose telephone conversations were intercepted pursuant to wiretap which was authorized on basis of application which failed to disclose that one of the persons under investigation had previously been the subject of a wiretap had standing to seek suppression of the intercepted communication. *United States v. J. A. Bellosi* (1974, 501 F. 2d 833, 163 U.S. App. D.C. 273).

Suppression

Communications which were intercepted pursuant to wiretap which was authorized on basis of application which failed to disclose previous wiretap authorization directed against one of the individuals under investigation were "unlawfully intercepted" within meaning of statute which provides for suppression of communications which are unlawfully intercepted. *United States v. J. A. Bellosi* (1974, 501 F. 2d 833, 163 U.S. App. D.C. 273).

§ 23-553. Authorization for disclosure and use of intercepted wire or oral communications

NOTES TO DECISIONS

Disclosure without court order

Where gambling paraphernalia seized pursuant to search and arrest warrants would have been lawfully seized even if metropolitan police department officers' disclosure of surveillance data to FBI had been violative of statute requiring officer who intercepts communications relating to offenses other than those specified in

order of authorization to make application to a judge for disclosure and use, and this evidence was sufficient to sustain defendant's conviction, any noncompliance with such statute was harmless error. *United States v. A. R. Moore, Jr.* (1975, 513 F.2d 485, 168 U.S. App. D.C. 227).

Where wiretap applications and orders concerned gambling offenses for which the statute permitted court-authorized installation of electronic surveillance equipment, and evidence was intercepted which not only related to such offenses but also established probable cause to believe federal gambling offenses were being committed, metropolitan police department officers' disclosure of such evidence to FBI was not within contemplation of statute requiring officer who intercepts communications relating to offenses other than those specified in order of authorization to make application to a judge for disclosure and use. *Id.*

SUBCHAPTER IV.—ARREST WARRANT AND SUMMONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 23-501.

§ 23-561. Issuance, form, and contents

(b) (1) An arrest warrant shall be signed by the judicial officer and shall state or contain the name of the issuing court, the date of issuance of the warrant, a description of the offense charged, and the name of the person to be arrested or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall command that the person be arrested and brought before the issuing court or officer.

(As amended Oct. 26, 1974, Pub. L. 93-481, § 4(e), 88 Stat. 1456.)

AMENDMENT

1974—Act Oct. 26, 1974, Pub. L. 93-481, repealed the last sentence of subsec. (b) (1) which read: "If the complaint establishes probable cause to believe that one of the conditions set out in subparagraphs (A) through (D) of section 23-591(c) (2) is likely to exist at the time and place at which such warrant is to be executed, the warrant may contain an authorization that it be executed as provided in section 23-591."

§ 23-562. Execution and return

NOTES TO DECISIONS

Processing arrestees—Unnecessary delay

Right of an arrestee to post collateral should be read in conjunction with the requirement that a person arrested with or without warrant be taken before a court or magistrate without unnecessary delay; booking and collateral release of a detainee should proceed without any unnecessary delays. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F. Supp. 186).

Mere fact that persons who were arrested during mass arrests attendant to demonstration spent hours in detention, often in inconvenient circumstances, before being processed and released does not, of itself, compel the conclusion that the police were unnecessarily dilatory; police will not be required to adhere to a two-hour time limit on collateral release in the future. *Id.*

Police department's policy of not allowing attorneys or representatives of organizations to post collateral for detainees who had been arrested during demonstrations but whom the attorneys could not identify in advance was an unnecessary delay in effectuating the release of the arrestees. *Id.*

Right to counsel

Person does not have the right to counsel at the time of booking or collateral release; those events are not interrogative stages of the criminal process but merely

administrative prerequisite. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F. Supp. 186).

SUBCHAPTER V.—ARREST WITHOUT WARRANT

§ 23-581. Arrests without warrant by law enforcement officers

NOTES TO DECISIONS

Arrest records—Expungement

Class-wide injunctive relief ordering police department to expunge records of persons who had been arrested during mass demonstrations without probable cause is inappropriate; persons arrested should present request for expungement of their records to the police department, which should not continue to assert that it is barred by statute from expunging arrest records and that amplification is the sole remedy. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F. Supp. 186).

On failure of showing of probable cause for arrests, in action to declare certain acts with respect to arrests and prosecutions unconstitutional and to enjoin further prosecutions in connection with disorderly conduct type offenses related to antiwar demonstrations in District of Columbia during week of May 3, 1971, defendant officials were ordered to convey to counsel for plaintiffs for destruction all specified records that would in any way relate, inform or reflect that any member of class had been arrested or charged with an offense from and including May 3 through May 6, 1971, and it was ordered that seizures of members of class from and including May 3, 1971, through May 6, 1971, would be deemed to have been "detentions" rather than "arrests." *N. Sullivan et al. v. C. F. Murphy et al.* (1974, 380 F. Supp. 867).

Liability for improper arrest

District of Columbia police inspector is individually liable for unlawful and unreasonable arrests of members of religious group, who were conducting peaceful prayer vigil near White House, where inspector had established police lines due to claimed danger of property damage and personal injury created by influx of "outsiders" into the vigil lines, but there was no evidence to suggest possibility of violence or property damage at scene of the vigil other than simple fact that "outsiders" who joined vigil had same appearance as persons who were present at monument grounds when "unknown" persons destroyed property. *L. Tatum et al. v. R. C. B. Morton et al.* (1974, 402 F. Supp. 719).

District of Columbia under common-law theory of respondent superior, is liable for actions of police inspector who was operating within scope of his duties as senior police officer at scene of unlawful arrests of members of religious group who were conducting peaceful prayer vigil near White House. *Id.*

Mass arrests

Police department which, in the past, had violated constitutional rights of persons arrested during mass arrests attendant to demonstrations is required to formulate a comprehensive written plan clearly stating the policies and procedures to be followed by the department in mass demonstrations and to clearly delineate the duties of officers involved. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F. Supp. 186).

Miranda warnings

Failure of police officers to advise persons being arrested as part of mass arrest made at time of demonstration of the specific charges being made against them and to give the arrestees their Miranda warnings constitutes a denial of due process. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F. Supp. 186).

Mode of arrest

Whether or not police officer who made warrantless arrest verbally characterized the particular crime for which he made his arrest at the time of making same was immaterial, since the description given by officer did not go to the question of probable cause and only question was whether officer had reasonable ground to believe

a felony had been committed. *J. A. Bond v. United States* (D.C. App. 1973, 310 A.2d 221).

Probable cause

Where police officer looked into hotel room after door was opened and saw people injecting some substance into themselves, officer had probable cause to believe that individuals inside were injecting narcotics, thereby violating the law, and he had both right and duty to seize contraband and place individuals under arrest. *R. E. Matthews v. United States* (D.C. App. 1975, 335 A.2d 251).

Where informant supplied police officer with detailed information relating to possession of marijuana by defendant and every aspect of such information, including place, time, and physical appearance, was checked and verified by police officer, police officer had probable cause for arrest. *United States v. R. D. Malcolm* (D.C. App. 1975, 331 A.2d 329).

Police officer who had interviewed alleged assault victim and concluded that his complaint, to the effect that accused had pointed a gun at him and threatened to kill him, was genuine, had probable cause to believe that an armed assault had taken place and that accused had committed it, and in light of the exigent nature of the circumstances had probable cause to arrest accused without an arrest warrant. *United States v. H. Simpson* (D.C. App. 1975, 330 A.2d 756).

Even though Florida police officers relied principally on offenses committed in District of Columbia in arresting defendant and stated that fact to him at time of arrest, where Florida officers also believed that defendant's possession and negotiation in Florida of money orders stolen in District of Columbia constituted violations of Florida law, police officers had probable cause to arrest defendant without a warrant. *United States v. J. M. Joyner* (1974, 492 F.2d 655, 160 U.S. App. D.C. 389).

Where defendant on police officer's request, after fourth encounter with defendant and codefendant displayed an automobile radio he was carrying and codefendant denied knowing defendant, which was highly improbable on basis of officer's prior observations indicating that codefendant was acting some how as a lookout, officer was possessed of sufficient facts and circumstances warranting belief that offense had been committed and justifying arrest, even though officer had received no report of crime of automobile radio theft. *J. E. Wray v. United States* (D.C. App. 1974, 315 A.2d 843).

The Constitution does not permit arrest at the scene of a demonstration, without probable cause at the time of the arrest, in the hope that evidence uncovered during the process of detention may serve as basis for prosecuting at least some of those arrested. *N. Sullivan et al. v. C. F. Murphy, Corporation Counsel, et al.* (1973, 478 F.2d 938, 156 U.S. App. D.C. 28; cert. denied 94 S. Ct. 162, 414 U.S. 880).

When the public authorities take action that must stand or fall on basis of an underlying arrest and when the validity of that arrest is questioned in an appropriate proceeding, the burden of establishing probable cause rests entirely upon the government. *Id.*

Where large numbers of persons were arrested during May, 1971, civil disorders, many of arrests were made without probable cause, arrestees were not given judicial hearing on probable cause, and possibility existed that many of the persons who obtained their release by posting bond were misled by erroneous information as to nature and consequences of posting bail and circumstances under which the bond could be recovered, federal court had jurisdiction to invalidate the forfeitures of the bonds. *Id.*

Where officer observed accused looking or searching behind desk in room of office building and observed him depart as soon as officer's presence became known and accused answered "Nothing" when officer addressed defendant outside building and asked him what he had been doing in the office, officer had probable cause to arrest accused and fruits of larcenies seized from accused's person incident to the arrest were admissible. *W. Arrington v. United States* (D.C. App. 1973, 311 A.2d 838).

Officer who observed defendant, a high school student outside school building, trying to stuff some money into envelope similar to those used in other narcotics transactions at the school and who saw a known narcotics ad-

dict approach defendant who started to run when officer reached for the envelope and tore a portion of the envelope from defendant's hand did not have probable cause to arrest defendant at the moment the envelope was seized, and heroin found in the envelope should have been suppressed. *F. L. Waters v. United States* (D.C. App. 1973, 311 A. 2d 835).

Police officers who were admitted to defendant's apartment with defendant's consent during course of investigation of death of five-year-old girl and who observed scratches on defendant's face, presence of candy, general disarray of room, and indications of recent bathing by defendant had probable cause for arrest. *United States v. W. Sheard* (1972, 473 F. 2d 139, 154 U.S. App. D.C. 9; cert. denied 93 S. Ct. 2784, 412 U.S. 943).

Where defendant, who had been questioned by officer on another matter, was still in view, three blocks away, when officer, who had been told that defendant had syringe under wig, called for scout car and stopped defendant and asked if she was wearing a wig, defendant had not left officer's presence in such a way as to make inoperative statute permitting arrest without a warrant if officer has probable cause to believe person has committed or is committing an offense in his presence. *United States v. S. P. Oliver* (D.C. App. 1972, 297 A. 2d 778).

Where police officer was told by another that defendant, whom officer had questioned, had a syringe under wig, officer's momentary stopping of defendant, inquiry about wig, and request to defendant to remove her hat were reasonable, and defendant's denial of wearing a wig and its obvious presence furnished independent observation and corroboration which gave rise to a reasonable basis to arrest defendant and seize contents of her hand, which she had removed from beneath wig and which contained syringe and a bag of methadone, and to seize tinfoil pack, which apparently contained heroin, from starch box from which defendant began to eat at police station. *Id.*

Processing arrestees—Facilities and care

Although problems involving overcrowded cells and inadequate sanitary facilities in jails where persons arrested during mass arrests made at time of demonstrations were kept might have been obviated by better planning, the conditions do not appear to be of sufficient gravity to be deemed a deprivation of a constitutional right. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F. Supp. 186).

Failure of police officers to give adequate medical attention to persons who were taken into custody during mass arrests at time of demonstrations amounts to deprivation of constitutional rights. *Id.*

— General

Fingerprinting and photographing of persons arrested in mass demonstrations is reasonable and appropriate to the task of processing arrestees. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F. Supp. 186).

Search and seizure

Police, who had learned of armed assault committed by accused, and, who, before entering accused's apartment, heard close of squeaky door, were entitled to make an arrest and effect a limited search for weapons incident thereto, for their own safety, and .38 revolver found in stove which was readily accessible to the three people in the room was admissible against the accused, subsequently identified by the victim, even though the accused was a functional cripple and was not arrested until the pistol had been seized. *United States v. H. Simpson* (D.C. App. 1975, 330 A.2d 756).

Where officer had probable cause to arrest defendant for operating a motor vehicle after revocation of his operator's permit and effected a full custody arrest, search of defendant's person without search warrant, inspection of crumpled cigarette package found on defendant's person and seizure of heroin capsules found in the package were permissible even though officer did not indicate any subjective fear of defendant and did not suspect that defendant was armed. *United States v. W. Robinson, Jr.* (1973, 94 S.Ct. 467, 414 U.S. 218; rev'g 471 F. 2d 1082, 153 U.S. App. D.C. 114).

Following arrest of defendant under warrant for operating motor vehicle after revocation of operator's permit, police officer was authorized to conduct "full field search"

of defendant, remove envelope from pocket inside coat and open it to determine if it contained narcotics. *United States v. K. C. Simmons* (D.C. App. 1973, 302 A. 2d 728).

Where defendant was arrested for the petty offense of driving with a learner's permit while unaccompanied by a licensed driver and was frisked at scene and no weapons were found, arresting officer who then took defendant to the station and instead of informing defendant, who had \$171 cash in his pockets, of his right to post \$50 collateral, as prescribed for the petty offense, and leave the precinct station, required defendant as a booking inventory procedure to empty his pockets, conducted an unreasonable search rendering narcotics seized from pocket inadmissible. *United States v. H. E. Mills* (1972, 472 F. 2d 1231, 153 U.S. App. D.C. 156).

Informing person arrested for petty offense of his option to post collateral and giving him an opportunity to exercise that option is a necessary condition to a thorough and complete search that is conducted only as incident to needs of stationhouse detention. *Id.*

When person is charged with a collateral-type petty offense under which he rightfully has opportunity to post collateral and avoid further detention and there is no probable cause to believe that he committed a more serious crime, police may not engage in an inventory search of offender or an equivalent direction that he empty his pockets and seek to support it on ground of holding him in further confinement, unless at a minimum he was notified of his opportunity to post collateral and refused or was unable to do so. *Id.*

Absent "special circumstances," a police officer has no right to search either the person or the vehicle incident to a lawful arrest for violation of a mere motor vehicle regulation. *United States v. W. Robinson, Jr.* (1972, 471 F. 2d 1082, 153 U.S. App. D.C. 114; rev'd 94 S. Ct. 467, 414 U.S. 218).

Arresting officers did not have reasonable grounds to search a passenger in back seat of an automobile stopped during "rush hour" for speeding even if after automobile stopped they observed passenger move his right arm and shoulder as if to hide something or put something away, and a gun and heroin found in such search should have been suppressed pursuant to defendant's motions. *United States v. L. N. Page* (D.C. App. 1972, 298 A. 2d 233).

Validity of arrest

Where officer had victim point out suspects, officer took victim to office of prosecutor for protection and upon returning was unable to find defendant and another and then went to motel at which defendant was reportedly staying and arrested defendant and his companion as they were about to leave the city, arrest without a warrant, effectuated by unconsented to entry into motel room, for not only violation of the three-card monte statute but grand larceny was valid and paraphernalia seized as incident to arrest were admissible. *J. A. Bond v. United States* (D.C. App. 1973, 310 A. 2d 221).

SUBCHAPTER VI.—AUTHORITY TO BREAK AND ENTER UNDER CERTAIN CONDITIONS

REPEAL OF SUBCHAPTER

Section 4(a) of Act Oct. 26, 1974, Pub. L. 93-481, 88 Stat. 1455, as amended Jan. 3, 1975, Pub. L. 93-635, § 16, 88 Stat. 2178, provided in part that subchapter VI of chapter 5 of title 23 of the District of Columbia Code is repealed.

§ 23-591. Repealed. Oct. 26, 1974, Pub. L. 93-481, § 4(a), 88 Stat. 1455; Jan. 3, 1975, Pub. L. 93-635, § 16, 88 Stat. 2178

Section, Act July 29, 1970, Pub. L. 91-358, § 210(a), title II, 84 Stat. 630, related to authority to break and enter under certain conditions.

NOTES TO DECISIONS UNDER PRIOR LAW

Announcement of identity

Where experienced police officer, familiar with narcotics and extent of narcotics abuse at hotel, knocked on door of hotel room of woman who was known to him, male voice asked who was there and officer responded "police", door was opened and officer saw group of people in

process of injecting presumed narcotics, officer was familiar with layout of room and knew that it contained a sink which would have permitted easy disposal of narcotics, and officer was in uniform and could be certain that doorman and any others who saw him would recognize him as police officer, any further announcement by officer before entering would have been a useless gesture, and thus he was not required to state his identity and purpose before entering. *R. E. Matthews v. United States* (D.C. App. 1975, 335 A.2d 251).

Breaking and entering

Where following execution of search warrant, several police officers went to defendant's apartment, knocked on defendant's door, policewoman in response to question "Who is it?" said "Sheryl. Is John there?", defendant then opened door several inches, police officer pushed it open rest of way and defendant stepped aside and all entered to execute warrant, and officer who led the way announced "Police officers; search warrant," defendant, by stepping away from door on seeing police permitted entry and thus police did not break and enter apartment in violation of this section by illegally announcing their identity and purpose as or after they entered rather than before. *J. T. Jones v. United States* (D.C. App. 1975, 336 A.2d 535; cert. denied 96 S. Ct. 427, 423 U.S. 997).

Where police officer's entrance into hotel room was gained by overcoming some momentary resistance from doorman, notwithstanding fact that officer had responded "police" when asked who was at the door, the entry constitutes a "breaking" within meaning of this section which requires that breaking and entry shall not be made until after police officer makes announcement of his identity and purpose. *R. E. Matthews v. United States* (D.C. App. 1975, 335 A.2d 251).

Probable cause

Where before officers entered hotel room officers knew (1) that occupants of room appeared to be on verge of injecting narcotics, (2) that at least one of them was aware of nearby police presence, (3) that there was a sink in room, and (4) that door had been braced shut with a board, and officers had made numerous prior narcotics arrests at hotel, officers had probable cause to believe that prior announcement would have been useless gesture and likely to have resulted in destruction of evidence, and no-knock entry was lawful. *H. L. Borum v. United States* (D.C. App. 1974, 318 A.2d 590).

Chapter 7.—EXTRADITION AND FUGITIVES FROM JUSTICE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11-2601.

§ 23-704. Extradition

CROSS REFERENCE

Representation of indigents, see § 11-2601.

NOTES TO DECISIONS

Evidence

Deficient showing of substantial charge in papers of demanding state can be supplemented by testimony of person possessing necessary information in order to make sufficient showing. *R. Tucker v. Commonwealth of Virginia* (D.C. App. 1973, 308 A.2d 783).

Evidence at extradition hearing, including testimony of affiant as to basis for Virginia warrant, was sufficient to establish probable cause to support rendition. *Id.*

Chapter 11.—PROFESSIONAL BONDSMEN

§ 23-1110. Designation of official to take bail or collateral when court is not in session; issuance of citations

NOTES TO DECISIONS

Processing arrestees—Unnecessary delay

Right of an arrestee to post collateral should be read in conjunction with the requirement that a person arrested with or without warrant be taken before a court or magistrate without unnecessary delay; booking and collateral release of a detainee should proceed without any unnecessary delays. *Washington Mobilization Com-*

mittee et al. v. M. J. Cullinane et al. (1975, 400 F. Supp. 186).

Police department's policy of not allowing attorneys or representatives of organizations to post collateral for detainees who had been arrested during demonstrations but whom the attorneys could not identify in advance was an unnecessary delay in effectuating the release of the arrestees. *Id.*

Right to counsel

Person does not have the right to counsel at the time of booking or collateral release; those events are not interrogative stages of the criminal process but merely administrative prerequisite. *Washington Mobilization Committee et al. v. M. J. Cullinane et al.* (1975, 400 F. Supp. 186).

Search and seizure

The official who is called upon to make the determinations involved in decision on incarceration—the arrangements for bail, the possibility of a citation issued at the stationhouse—must make that decision before it may be used to justify an intrusion on privacy as one permissible under the Fourth Amendment; the mere possibility that such a search might later be justified cannot serve to eliminate accused's rights under the Fourth Amendment at time of arrest. *United States v. W. Robinson, Jr.* (1972, 471 F.2d 1082, 153 U.S. App. D.C. 114; rev'd 94 S. Ct. 467, 414 U.S. 218).

Stationhouse clerks

Ordinarily a person arrested for an offense for which he may post bond or collateral is brought immediately to the Superior Court for that purpose, and if Superior Court is not in session, the stationhouse clerks who have the function of "booking" offenders serve also as acting clerks of the Superior Court and are therefore authorized to accept collateral or bond, but such stationhouse clerks have no discretion to either increase or decrease the amount of bond or collateral required by court rules. *United States v. W. Robinson, Jr.* (1972, 471 F.2d 1082, 153 U.S. App. D.C. 114; rev'd on other grounds 94 S. Ct. 467, 414 U.S. 218).

Chapter 13.—BAIL AGENCY AND PRETRIAL DETENTION

SUBCHAPTER I.—DISTRICT OF COLUMBIA BAIL AGENCY

§ 23-1303. Interviews with detainees; investigations and reports; information as confidential; consideration and use of reports in making bail determinations

NOTES TO DECISIONS

Impeachment, use of information for

Defendant was properly impeached by use of prior inconsistent statement given by him to representative of District of Columbia Bail Agency in the prosecution of offense for which the bail agency statement was given. *J. Herbert, Jr. v. United States* (D.C. App. 1975, 340 A.2d 802).

Stipulation as to impeachment testimony to be offered by employee of District of Columbia Bail Agency as to certain statements made to him by defendant after arrest was binding on defendant, notwithstanding contention that this section prohibits use of any information given Bail Agency for purpose of impeachment at trial. *L. A. Cowan v. United States* (D.C. App. 1975, 331 A.2d 323).

Pretrial detention reports

Failure of Government to comply with rule requiring attorney for Government to make biweekly report to court listing each defendant held pending trial for period in excess of ten days and to state reasons why such defendants were still being held in custody cancelled any negative effect that defendants' failure to assert right to speedy trial formally until day of trial might have had on validity of the speedy trial claim. *United States v. E. L. Cooper* (1974, 504 F.2d 260, 164 U.S. App. D.C. 191).

Record on appeal

Record on appeal from denial of motion to withdraw guilty pleas, raising serious unanswered questions about

whether defendant's decision to plead was materially affected by, inter alia, defense counsel's failure to seek an independent mental examination of defendant, or to call the psychiatrist to testify or the influence of ex parte communications between U.S. Attorney and examining staff, or psychiatrists' failure to file promptly his letters or court's failure to inquire into circumstances surrounding the examination was inadequate for proper consideration of district court's reasons for denying the motion. *United States v. G. M. Morgan* (1973, 482 F.2d 786, 157 U.S. App. D.C. 197).

§ 23-1307. Annual reports to executive committee, Congress, and Commissioner

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—RELEASE AND PRETRIAL DETENTION

§ 23-1321. Release in noncapital cases prior to trial

NOTES TO DECISIONS

Bail—Excessive

Although accused charged with grand larceny and released on personal recognizance bond allegedly threatened a witness and was arrested on charge of obstructing justice, setting of surety bond of \$5,000 is not justified on theory that, in view of the serious nature of the pending charges, amounting to an assault on integrity of judicial system, and the unemployment of accused, accused was unreliable and unlikely to abide by nonfinancial conditions of release; thus case must be remanded for proceedings on issue of pretrial detention or appropriate conditions of release. *H. D. Jones v. United States* (D.C. App. 1975, 347 A.2d 399).

Under Bail Reform Act of 1966, and under District of Columbia local bail provisions, a money bond may not be used to assure detention. *B. F. Villines v. United States* (D.C. App. 1973, 312 A.2d 304).

Conditions of release

Where trial court set secured money bonds of \$10,000 each for two defendants charged with murder during perpetration of robbery, but record did not contain full information concerning nature and circumstances of offense and why other conditions of release would not be suitable, proceedings on appeal after defendants' motions for review of bond had been overruled would be remanded for supplementation of record by complete statement by trial court on those matters or, if trial court deemed it appropriate, entry of new orders respecting pretrial bail. *D.C. Bouknight et ano. v. United States* (D.C. App. 1973, 305 A.2d 524).

Custodial release

Particularly when requested by accused, some form of third-party custody should be explored and rationally imposed or rejected before a monetary bond is selected. *H. D. Jones v. United States* (D.C. App. 1975, 347 A.2d 399).

Setting of third-party custody and intensity thereof as condition of pretrial release need not immediately result in release because custodian obtained, as well as degree of supervision undertaken, must be acceptable to court before release is permitted. *Id.*

§ 23-1322. Detention prior to trial

NOTES TO DECISIONS

Bail

Pretrial order setting \$10,000 bail for release of accused, who was charged with robbery and weapon assault in case of considerable notoriety and who exhibited self-oriented pattern of life with little or no recognition of social responsibility, and rejecting accused's plan to be placed in multiparty, 24-hour custody of his father, mother and

grandmother would be affirmed. *T. Marshall v. United States* (D.C. App. 1973, 308 A.2d 766).

— Excessive

Although accused charged with grand larceny and released on personal recognizance bond allegedly threatened a witness and was arrested on charge of obstructing justice, setting of surety bond of \$5,000 is not justified on theory that, in view of the serious nature of the pending charges, amounting to an assault on integrity of judicial system, and the unemployment of accused, accused was unreliable and unlikely to abide by nonfinancial conditions of release; thus case must be remanded for proceedings on issue of pretrial detention or appropriate conditions of release. *H. D. Jones v. United States* (D.C. App. 1975, 347 A.2d 399).

Under Bail Reform Act of 1966, and under District of Columbia local bail provisions, a money bond may not be used to assure detention. *B. F. Villines v. United States* (D.C. App. 1973, 312 A.2d 304).

Constitutionality

As applied after showing that defendant had threatened witnesses, pretrial detention statute was not unconstitutional as resulting in denial of defendant's right to bail prior to trial. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

Pretrial detention statute was not unconstitutional as denying due process by abridging presumption of innocence. *Id.*

Pretrial detention statute provided procedure for detention hearings which satisfied requirements of fundamental fairness and did not deprive defendant of due process by denying him right to cross-examine witnesses who alleged that he had threatened them. *Id.*

Pretrial detention statute did not unconstitutionally deny defendant due process of law by establishing "clear and convincing" evidence as standard of proof in detention hearings rather than "reasonable doubt" standard. *Id.*

Construction

Pretrial detention statute does not require that government make motion for pretrial detention as soon as grounds therefor become apparent or be thereafter foreclosed from making such motion. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

Evidence—Sufficiency

Showing of defendant's lengthy criminal record spanning 22 years, highly assaultive nature of defendant's past offenses and gravity of pending charge of assault with deadly weapon, together with failure of defense to present any suitable structured program of release, supported finding that no condition or combination of conditions of release would reasonably assure witness' safety and that defendant should therefore be committed to pretrial detention. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

Findings—Sufficiency

Even though defendant contested complaining witness' version of events which led to defendant's arrest for obstructing justice, had trial court inquired into that charge and concluded that there was clear and convincing evidence that defendant was guilty of obstruction of justice, his detention would have been warranted pursuant to pretrial detention provisions of this section. *H. D. Jones v. United States* (D.C. App. 1975, 347 A.2d 399).

Finding by trial judge that defendant was a person described in pretrial detention statute was sufficient to permit Court of Appeals to determine that court had found allegations that defendant threatened government witnesses to be true by clear and convincing evidence. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

Identification

If Government's case turns upon testimony of identification witness, and defense counsel forecasts irreparable suggestivity if witness appears at preliminary hearing, his remedy lies in a motion for a lineup order, to assure that identification witness will first view the suspect at a lineup, rather than in the magistrate's hearing room; the magistrate or judge should grant this motion, unless cause to the contrary is shown, since a lineup conducted

by police, with attendance of defense counsel, assures or at least promotes reliability of identification and is therefore in interest of justice. *United States v. E. Smith* (1972, 473 F.2d 1148, 154 U.S. App. D.C. 111).

Mootness

Where subsequent to time amended complaint was filed challenging constitutionality of preventive detention provisions of District of Columbia Court Reform and Criminal Procedure Act by plaintiff who had been incarcerated under such provisions, the District of Columbia Court of Appeals vacated the order of the Superior Court under which plaintiff had been detained, and as result of proceedings on remand a parole violation warrant was executed against plaintiff who was being detained pending trial as a parole violator, the complaint would be dismissed as moot as against contention that "collateral consequences" attached to original determination of superior court that plaintiff should be preventively detained an as against contention that in view of short term nature of preventive detention orders appellate review of detention orders, at least if limited to individual cases of detention, would always be frustrated on mootness grounds. *S. Dash, Chairman, et al. v. Hon. J. N. Mitchell, Attorney General etc., et al.* (1972, 356 F. Supp. 1292).

Proof

Where, although government's proffer of proof that defendant had made threats against prospective witnesses as technically made before government made its motion for pretrial detention, defendant and his counsel were present at time of proffer but made no effort to rebut it and both failed to ask court for additional time to gather evidence to rebut allegation of threats or took advantage of actual offer of court for such time, any error made by court in relying on government's proffer did not prejudice defendant and was harmless. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

Standing

"Organizational plaintiffs" consisting of individual trustees of Public Defender Service of District of Columbia, Washington Urban League Incorporated, and American Civil Liberties Union Fund of the national capital area had no standing to challenge constitutionality of District of Columbia Reform and Criminal Procedure Act of 1970, where allegations failed to set out any "injury in fact" to the plaintiffs. *S. Dash, Chairman, et al. v. Hon. J. N. Mitchell, Attorney General etc., et al.* (1972, 356 F. Supp. 1292).

Plaintiffs had no standing as federal taxpayers to challenge constitutionality of Act on theory that the plaintiffs' tax payments and those of other taxpayers would be used to defray costs of pretrial detention of persons pursuant to the Act, since the Act serves primarily to "regulate" one aspect of administration of criminal justice within the District of Columbia, and any expenditure of funds in administration of the preventive division was only "incidental" in character. *Id.*

Plaintiffs had no standing as District of Columbia taxpayers to challenge constitutionality of Act on theory that plaintiffs' tax payments and those of other taxpayers of District would be used to defray costs of pretrial detention of persons pursuant to the Act, since the preventive detention provisions were not part of a "spending program" but served primarily to "regulate" one aspect of administration of criminal justice within the District. *Id.*

A complaint alleging that plaintiff "is subject to pretrial detention if charged with another such offense [crime of violence]" did not state a justiciable case or controversy so as to give standing to challenge constitutionality of Act, where, inter alia, there were no allegations of possibility of another arrest for a "crime of violence," and there was no allegation that plaintiff was inhibited or deterred in exercise of his First Amendment rights. *Id.*

Allegation that plaintiff had been arrested for a "dangerous crime" did not give him standing to challenge constitutionality of preventive detention provisions of Act on ground that plaintiff was inhibited or deterred in exercise of his First Amendment rights, where there was no allegation that plaintiff had any reason to fear that preventive detention would be sought, there was no allegation that plaintiff was or had been inhibited or deterred

in exercise of First Amendment rights, and the "dangerous crime" charge against plaintiff had been dismissed. *Id.*

Threats to witnesses

Court is not prevented by defendant's right to bail from acting to protect witnesses from threats by defendant, thus safeguarding integrity of its own process. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

Time for hearing

Commitment of defendant to pretrial detention was not rendered improper by mere fact that government did not move for such detention until five months after defendant's arrest. *T. E. Blunt v. United States* (D.C. App. 1974, 322 A.2d 579).

§ 23-1324. Appeal from conditions of release

NOTES TO DECISIONS

Pretrial bail

Pretrial order setting \$10,000 bail for release of accused, who was charged with robbery and weapon assault in case of considerable notoriety and who exhibited self-oriented pattern of life with little or no recognition of social responsibility, and rejecting accused's plan to be placed in multiparty, 24-hour custody of his father, mother and grandmother would be affirmed. *T. Marshall v. United States* (D.C. App. 1973, 308 A.2d 766).

Remand

Where trial court set secured money bonds of \$10,000 each for two defendants charged with murder during perpetration of robbery, but record did not contain full information concerning nature and circumstances of offense and why other conditions of release would not be suitable, proceedings on appeal after defendants' motions for review of bond had been overruled would be remanded for supplementation of record by complete statement by trial court on those matters or, if trial court deemed it appropriate, entry of new orders respecting pretrial bail. *D. C. Bouknight et ano. v. United States* (D.C. App. 1973, 305 A.2d 524).

§ 23-1325. Release in capital cases or after conviction

NOTES TO DECISIONS

Applicability

Federal Bail Reform Act (18 U.S.C. 3148), rather than District of Columbia Code bail provisions, is applicable where a defendant, convicted in federal court of a District of Columbia Code offense, presents a motion for release pending appeal in federal courts of District of Columbia. *United States v. W. Brown* (1973, 483 F.2d 1314, 157 U.S. App. D.C. 311).

Bail—Excessive

Under Bail Reform Act of 1966, and under District of Columbia local bail provisions, a money bond may not be used to assure detention. *B. F. Villines v. United States* (D.C. App. 1973, 312 A.2d 304).

Construction

Applications for release of prisoners convicted in the District of Columbia under federal criminal statutes having nationwide application must be considered under the Bail Reform Act of 1966 and not under the 1970 Court Reform and Criminal Procedure Act [this subchapter]. *United States v. T. E. Stanley* (1972, 469 F.2d 576, 152 U.S. App. D.C. 170).

Likelihood of reversal

Defendant, who was convicted of manslaughter and as to whom trial judge could not find a likelihood of reversal though he did not consider risk of flight or danger, would not be granted release under statutory provisions on non-financial conditions pending appeal. *United States v. W. Jones* (1972, 476 F.2d 883, 155 U.S. App. D.C. 127).

Risk of flight or danger

Since defendant raised substantial issues on appeal he had a right to be released, assuming he could show that he was unlikely to leave the jurisdiction or pose danger to others. *United States v. J. L. Sarvis* (1975, 523 F.2d 1177, 173 U.S. App. D.C. 228).

Only basis for refusal to reduce a postconviction surety bond must be found in a necessity to ensure against flight. *B. F. Villines v. United States* (D.C. App. 1973, 312 A.2d 304).

In view of defendant's past record of convictions, character, and fact of conviction for inducing a female to engage in prostitution, compelling a female by threats and duress to live a life of prostitution against her will, assault with a dangerous weapon, and mayhem and malicious disfigurement, order setting postconviction bail was unsupported respecting necessary finding as to non-dangerousness, and defendant should have been ordered detained pending appeal and should have remained in custody, not because he lacked means to make bail, but for reason that his release would present danger to community. *Id.*

Defendants, who were convicted of second-degree murder and carrying a deadly weapon and as to whom trial judge was unable to find that they were not likely to flee or pose a danger though he did not discuss substantiality of the appeal, would not be granted bail pending appeal. *United States v. C. L. Smith* (1972, 476 F. 2d 884, 155 U.S. App. D.C. 128).

§ 23-1327. Penalties for failure to appear

NOTES TO DECISIONS

Construction

Phrase "released * * * prior to the commencement of his sentence" in this section relating to offense of willful failure to appear in court as required is intended to make it certain that defendant will be subject to sanctions of bail-jumping statute at all stages of criminal proceeding until he surrenders to serve his sentence and is not intended to indicate that conviction and sentence in underlying offense are conditions precedent to bail-jumping conviction. *W. J. Williams v. United States* (D.C. App. 1975, 331 A.2d 341).

Elements of offense

Fact that underlying burglary charge was dismissed does not render invalid defendant's conviction for willfully failing to appear at preliminary hearing on burglary charge. *W. J. Williams v. United States* (D.C. App. 1975, 331 A.2d 341).

For conviction of willful failure to appear while subject to conditions of release, Government satisfies burden of showing that failure to appear is willful by demonstrating what is commonly referred to as general intent of defendant to commit act of omission, and no specific intent need be proved. *F. L. Patton v. United States* (D.C. App. 1974, 326 A. 2d 818).

Instructions

In prosecution for willfully failing to appear at preliminary hearing on second-degree burglary charge, defendant was not entitled to instruction on defense of

intoxication, where defendant testified that he was intoxicated on alcohol and had been taking a stimulant at time when he was scheduled to appear but he produced no evidence that he had reached a point of incapacitating intoxication. *W. J. Williams v. United States* (D.C. App. 1975, 331 A.2d 341).

Set aside of bond forfeiture

Given proffer of data regarding asserted departures from customary practice by bail agency and clerk's office, bondsman's assistance in apprehending defendant and the delay or prejudice suffered by government by breach, it was error for trial judge not to have held an evidentiary hearing on motion of bondsman to set aside bond forfeiture. *United States v. J. J. Nell et ano.* (1975, 515 F.2d 1351, 169 U.S. App. D.C. 380).

Willfulness

Trial court's reliance upon statutory presumption to establish the element of "willfulness," necessary to a conviction of bail jumping, did not violate defendant's Fifth Amendment rights to due process and privilege against self-incrimination; moreover, defendant did not raise that issue in the trial court and, under the circumstances, the Court of Appeals would decline to exercise its discretion to notice the asserted error raised for the first time on appeal. *D. M. Robinson v. United States* (D.C. App. 1974, 322 A. 2d 271).

§ 23-1332. Applicability of subchapter

NOTES TO DECISIONS

Construction

Applications for release of prisoners convicted in the District of Columbia under federal criminal statutes having nationwide application must be considered under the Bail Reform Act of 1966 and not under the 1970 Court Reform and Criminal Procedure Act [this subchapter]. *United States v. T. E. Stanley* (1972, 469 F. 2d 576, 152 U.S. App. D.C. 170).

Chapter 17.—DEATH PENALTY

§ 23-1702. Provision for death chamber; appointment of executioner and assistants; fees

SUCCESSION IN GOVERNMENT

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TITLE 24.—PRISONERS AND THEIR TREATMENT

Chapter 1.—PROBATION

§ 24-104. Discharge from or continuance of probation—Modification or revocation of order.

NOTES TO DECISIONS

Construction

Probation statutes are broadly drawn and necessarily must lend themselves to flexibility. *J. Wright v. United States* (D.C. App. 1974, 315 A.2d 839).

Statute should not be so construed as to result in absurdity, where statute fairly leaves room for construction to avoid such result. *Id.*

Under statute providing for modification of terms and conditions of order of probation "during the probationary term," "probationary term" should be construed for revocation purposes as including term beginning at time probation is granted. *Id.*

Revocation

Probation must not be revoked except after exercise of informed discretion based upon hearing in accordance with due process requirements. *J. Wright v. United States* (D.C. App. 1974, 315 A.2d 839).

Once granted, probation does not become vested right; it is granted in sound exercise of discretion and so may be revoked. *Id.*

Where defendant convicted of attempted petit larceny was sentenced to imprisonment for 365 days, of which 180 days was to be served under work release program and the remainder suspended, and work release was to be followed by one year's probation, and defendant arrived at halfway house but that same evening left and did not return, sentencing court had power, after adequate hearing at which defendant was represented by counsel, to vacate prior order suspending sentence, and to revoke probation, though statute provided for modification of terms and conditions of order of probation at any time "during the probationary term." *Id.*

A probationer must be given advance notice of probation revocation hearing, must be informed of charges against him, and must be given an opportunity to meet and answer the charges. *United States v. W. H. Joyner* (1973, 486 F.2d 1261, 159 U.S. App. D.C. 1).

Facts that "Important Notice From Your Bondsman," advising probationer to appear in court on certain date, did not explain purpose of hearing, that probationer did not personally receive any notification, that until day of hearing probationer's attorney had not seen him for several months, and that revocation was based on a simple statement of all charges made, without explanation of circumstances out of which they arose, without presentation of evidence, and without specification by court of which of the charges, if less than all, the court's determination to revoke probation was based upon combined to render probation revocation hearing defective. *Id.*

§ 24-106. Services of a psychiatrist and a psychologist available to probation officers, the Board of Parole and other designated officers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—INDETERMINATE SENTENCES AND PAROLES

§ 24-201a. Board of Parole—Rules and regulations.

SUCCESSION IN GOVERNMENT

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§ 24-204. Parole authorized—Conditions—Custody.

SUCCESSION IN GOVERNMENT

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NOTES TO DECISIONS

Computation of sentence

Department of Corrections improperly computed prisoner's sentences where it failed to give prisoner credit toward parole eligibility for time served under sentence which was later vacated. *J. T. Cogdell v. D. C. Jackson et al.* (1975, 397 F. Supp. 362).

§ 24-205. Violation of parole—Warrant—Arrest—Return to confinement.

CROSS REFERENCES

Representation of indigents, see §§ 2-2222, 11-2601.

Rewards for apprehension of parole violators, see § 24-426.

NOTES TO DECISIONS

Jurisdiction

Parole board secures its jurisdiction over parolee by issuing violation warrant before date of parole expiration, and such jurisdiction is not lost simply because board chooses to delay revoking parole until intervening criminal sentence has been fully served. *D. H. Sutherland v. District of Columbia Board of Parole* (1973, 366 F. Supp. 270).

Warrant as detainer

Parole board's decision to maintain warrant as detainer in excess of three years without affording parole revocation hearing violated parolee's right to due process under the Fifth Amendment. *W. H. Jones v. S. Johnston, Parole Executive etc.* (1974, 368 F. Supp. 571).

§ 24-206. Revocation of parole after retaking—Hearing—New parole.

CROSS REFERENCE

Representation of indigents, see §§ 2-2222, 11-2601.

NOTES TO DECISIONS

Discretion of board

Parole board must consider mitigating circumstances and rehabilitative potential as well as existence of parole violations before determining that reincarceration is appropriate. *D. H. Sutherland v. District of Columbia Board of Parole* (1973, 366 F. Supp. 270).

Jurisdiction

Parole board secures its jurisdiction over parolee by issuing violation warrant before date of parole expiration, and such jurisdiction is not lost simply because board chooses to delay revoking parole until intervening criminal sentence has been fully served. *D. H. Sutherland v. District of Columbia Board of Parole* (1973, 368 F. Supp. 270).

Prompt disposition of consequence of parole violation

Failure to provide parolee with parole revocation hearing or even dispositional interview during period of approximately three years while parole violation warrant was lodged as detainer against parolee who was in prison required cancellation of the warrant even though parolee had been convicted of a crime while on parole. *W. H. Jones v. S. Johnston, Parole Executive etc.* (1974, 368 F. Supp. 571).

It is of paramount importance that parole board not stop in its review of alleged parole violation at detainer stage but continue with critical decision of whether parolee has violated terms of his parole and, if he has, what measures are appropriate both in terms of the community and the parolee himself. *Id.*

Federal prisoner had right to prompt parole revocation hearing on parole revocation detainer warrant lodged against him while he was serving ten-year term in federal penitentiary, and parole board could not wait until prisoner's current sentence had been served before holding hearing or revoking parole. *D. H. Sutherland v. District of Columbia Board of Parole* (1973, 366 F. Supp. 270).

Where no parole revocation hearing had been held for more than five months after parole revocation warrant was lodged as detainer on federal prisoner, it was too late for parole board to cure its error by affording prisoner revocation hearing and court would direct that board cancel warrant. *Id.*

Right to counsel

Where violation of parole consisted in not reporting to parole headquarters immediately upon release and parolee remained at liberty four years without acquiring any criminal record, and his parole had been mandatory, absence of counsel at parole revocation proceeding warranted setting aside order of revocation. *R. W. Baker v. T. R. Sard et al.* (1973, 486 F. 2d 415, 158 U.S. App. D.C. 348).

Sentence upon reimprisonment

Fact that petitioner had not been released by the time of his maximum release date was not a basis for concluding that he was being unlawfully held by the parole board in violation of his rights to due process where, as a parole violator during term of his original sentence, he was required to return to incarceration to serve balance of sentence and lost time which he spent on parole before violation, practical effect of which was to extend ultimate release date. *L. A. Arrington v. A. McGruder, et al.* (1974, 490 F. 2d 795, 160 U.S. App. D.C. 227).

§ 24-209. Federal Parole Board—Authority over United States prisoners convicted in the District of Columbia.**NOTES TO DECISIONS****Prompt disposition of consequence of parole violation**

Failure to provide parolee with parole revocation hearing or even dispositional interview during period of approximately three years while parole violation warrant was lodged as detainer against parolee who was in prison required cancellation of the warrant even though parolee had been convicted of a crime while on parole. *W. H. Jones v. S. Johnston, Parole Executive etc.* (1974, 368 F. Supp. 571).

It is of paramount importance that parole board not stop in its review of alleged parole violation at detainer stage but continue with critical decision of whether parolee has violated terms of his parole and, if he has, what measures are appropriate both in terms of the community and the parolee himself. *Id.*

Warrant as detainer

Parole board's decision to maintain warrant as detainer in excess of three years without affording parole revocation hearing violated parolee's right to due process under

the Fifth Amendment. *W. H. Jones v. S. Johnston, Parole Executive etc.* (1974, 368 F. Supp. 571).

Chapter 3.—INSANE CRIMINALS

§ 24-301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded—Return order for apprehension of escaped inmates—Procedure and time limitation for pleading insanity as a defense.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Representation of indigents by Public Defender Service, see § 2-2222.

Rewards for apprehension of fugitives from welfare institutions, see § 24-426.

NOTES TO DECISIONS**Burden of proof**

There is justification for preponderance of proof standard for commitment of the insanity-acquitted even if higher standard is required prior to civil commitment for propensity and even though there is no justification for denying the insanity-acquitted the right to jury trial that is recognized for those involved in civil commitment proceedings. *United States v. J. J. Brown* (1973, 478 F. 2d 306, 155 U.S. App. D.C. 402).

Where insanity-acquitted individual has been in detention for considerable period of time, his continued detention vel non should be governed by same standard of burden of proof applied to civil commitments; extent of period calls for sound discretion, considering nature of crime, nature of treatment, and response of person, and generally will not exceed five years and should never exceed maximum sentence for offense, less mandatory release time. *Id.*

Defendant acquitted by reason of insanity could be committed on determination of mental illness by preponderance of evidence, despite contention that due process required reasonable doubt standard in involuntary civil commitment proceeding and that equal protection required same standard for the insanity-acquitted. *Id.*

— On petition for release

Where, prior to *Bolton* decision holding that persons acquitted by reason of insanity must be given judicial hearing similar to committed persons prior to their commitment, petitioner was committed to mental hospital after he was found not guilty by reason of insanity and petitioner had been confined for over nine of ten years for which he might have been sentenced criminally, trial court should consider whether government should bear burden of proving continued confinement was justified. *G. C. Waite v. L. Jacobs* (1973, 475 F. 2d 392, 154 U.S. App. D.C. 281).

Commitment after acquittal by reason of insanity

If defendant is found not guilty by reason of insanity, it is the duty of the trial court to commit him to mental hospital for hearing to determine whether defendant is entitled to relief and in that hearing the defendant has burden of proving by preponderance of the evidence that he is not likely to injure himself or other persons due to mental illness if he is released from custody. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

Competency hearing

When differing views of experts exist on issue of defendant's sanity at time of offense and the views supporting the insanity defense are not inherently incredible, their presentation in an on-the-record inquiry would aid the

trial judge in exercising in an informed manner his discretion as to whether to interpose the insanity defense and would allow the appellate court to intelligently review that exercise for signs of abuse. *United States v. R. E. David* (1975, 511 F. 2d 355, 167 U.S. App. D.C. 117).

Where court, after defendant's conviction and prior to sentencing, requested and received a psychiatric report showing defendant to be competent to engage in the pending proceedings, to which report defendant did not object, failure to hold hearing on defendant's competency was not an abuse of discretion. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Competency to stand trial

In making a determination of competency to stand trial, it may be very useful for the trial judge to question both the defendant and his counsel; the applicable criteria to measure one's ability to consult with his lawyer and to understand the course of legal proceedings and thus counsel's firsthand evaluation of a defendant's ability to consult on his case and to understand the charges and proceedings against him may be as valuable as an expert psychiatric opinion on competency. *United States v. R. E. David* (1975, 511 F. 2d 355, 167 U.S. App. D.C. 117).

Conditional release

Evidence concerning extremely short period of time during which patient who had been committed to hospital after being acquitted of rape and murder by reason of insanity had been without medication, apparent haste to subject him to psychological testing and the inner turmoil still reflected therein and patient's elopement from hospital shortly after being told to assume a great deal of responsibility for his own future raised sufficient questions about patient's mental stability and adequacy of hospital's investigation into his mental status to support trial judge's denial of conditional release which had been recommended by the hospital. *United States v. L. C. Ecker, II* (1973, 479 F. 2d 1206, 156 U.S. App. D.C. 223).

In determining whether patient who has been committed to hospital after being acquitted of crime by reason of insanity should be given conditional release from hospital, hospital and trial court, which must approve hospital's recommendation for such release, should elucidate with specificity those factors which weigh heavily in their decisions. *Id.*

Theoretical limits of prison term to which patient might have been sentenced for murder had he not been acquitted by reason of insanity were of no relevance in determining whether patient should have been conditionally released from hospital to which he had been committed following his acquittal. *Id.*

Construction

Defendant acquitted by reason of mental retardation is within provisions of this section for commitment of insanity—acquitted to hospital for mentally ill, until eligible for release, and commitment is mandatory. *United States v. M. K. Shorter* (D.C. App. 1975, 343 A. 2d 569).

Continuance for mental examination

Refusal, in prosecution for offenses, which allegedly took place in November, 1971, of sodomy, taking indecent liberties with a minor and assault with a deadly weapon, to grant continuance for psychiatric examination of accused merely on basis of fact that accused's record included at least one 1967 conviction for a crime against nature was not an abuse of discretion. *J. C. Davis v. United States* (D.C. App. 1974, 315 A. 2d 157).

Discretion of court

The determination of a defendant's competency to stand trial must be that of the trial judge; it is the duty of the trial judge to make a specific judicial determination of competency to stand trial, rather than accept psychiatric advice as determinative on the issue. *United States v. R. E. David* (1975, 511 F. 2d 355, 167 U.S. App. D.C. 117).

Equal protection of the laws

Exercise of trial judge's statutory, broad power of review over decision of hospital, to which patient had been committed following his acquittal of rape and murder by reason of insanity, to release him conditionally did not deny

patient equal protection. *United States v. L. C. Ecker, II* (1973, 479 F. 2d 1206, 156 U.S. App. D.C. 223).

After expiration of period for which acquitee might have been incarcerated had he been convicted, it may be irrational, within meaning of equal protection doctrine, to distinguish between acquitee and committee. *G. C. Waite v. L. Jacobs* (1973, 475 F. 2d 392, 154 U.S. App. D.C. 281).

Once maximum sentence period has expired, it is unconstitutional to discriminate against acquitee, as compared with committee, for purposes of release from indefinite commitment. *Id.*

Escape

Arrest of defendant on felony charge was terminated and lost its legal vitality when he was acquitted by reason of insanity; thus, defendant's escape from mental hospital to which he was committed following the acquittal did not constitute an escape from custody pursuant to a lawful arrest and did not violate the Federal Escape Act. *United States v. W. C. Powell* (1974, 503 F. 2d 195, 164 U.S. App. D.C. 104).

Evidence—Abnormal mental condition

Even when there is no defense of insanity, expert testimony of abnormal mental condition will be admissible when it bears on the existence of specific mental element necessary for a crime, provided trial judge determines that the testimony is grounded in sufficient scientific support, and would aid jury in reaching decision on ultimate issues; overruling *Fisher v. United States*, 80 U.S. App. D.C. 96, 149 F. 2d 28. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

A defendant who presents evidence that his abnormal condition of the mind has substantially impaired behavioral controls is exculpated if his behavioral controls were not only substantially impaired but were impaired to such extent that he lacked substantial capacity to conform his conduct to the law. *Id.*

— Mental disease or defect

The introduction or proffer of past criminal and anti-social actions is not admissible as evidence of mental disease unless accompanied by expert testimony, supported by showing of the concordance of a responsible segment of professional opinion, that the particular characteristics of these actions constitute convincing evidence of an underlying mental disease that substantially impairs behavioral controls. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

Habeas corpus

This section which precludes a person who has been committed to a hospital for mentally ill after being acquitted by reason of insanity and who has not filed a motion for his release from applying for habeas corpus unless his remedy is inadequate or ineffective to test validity of his detention, defendant, who was committed under pre-Bolton procedures, was foreclosed from petitioning for federal habeas corpus on ground that he should be released from confinement unless government bore burden of proving that his mental condition fell within intentment of relevant commitment statutes, until he first presented to District of Columbia Superior Court his argument for altering burden of proof in regard to pre-Bolton defendants. *J. A. Johnson v. L. Robinson* (1974, 509 F. 2d 395, 166 U.S. App. D.C. 62).

Insanity defense

Insanity defense is raised where as result of mental disease or defect a defendant lacks substantial capacity either to appreciate criminality of his conduct or to conform his conduct to requirements of law, and, "mental retardation" being mental defect capable of affecting both mental processes and behavior controls to extent that defendant in given situation might not be able to appreciate wrongfulness of his conduct or might not be able to conform his conduct to requirements of law is a basis for insanity defense. *United States v. M. K. Shorter* (D.C. App. 1975, 343 A. 2d 569).

This section which places burden on accused to prove insanity defense by preponderance of evidence applied to productivity as well as insanity, in criminal prosecution, where, at time of offense charged, defense of insanity was a unitary concept requiring proof of insanity and productivity. *United States v. L. Greene* (1973, 489 F. 2d

1145, 160 U.S. App. D.C. 21; cert. denied 95 S. Ct. 239, 419 U.S. 977).

This section which requires accused to prove insanity defense by preponderance of evidence does not deny equal protection merely because different standard of proof concerning such defense is applicable in other federal jurisdictions. *Id.*

This section which requires accused to prove insanity defense by preponderance of evidence did not deny due process to defendant who was accused of violation of D.C. statute pertaining to felony murder, in that sanity was not an element of such offense. *Id.*

Where offenses with which defendant was charged were committed at time when the prosecution had the burden of proving criminal responsibility beyond a reasonable doubt once defendant had raised an insanity defense, where statute was thereafter amended to preclude acquittal on ground of insanity unless insanity was affirmatively established by a preponderance of the evidence, and where defendant raised insanity defense, giving of instruction, over objection, that defendant had burden of establishing his insanity defense by a preponderance of the evidence violated the ex post facto clause of the Constitution, despite contention that amendment provided for a mere procedural change. *United States v. E. B. Williams, Jr.* (1973, 475 F. 2d 355, 154 U.S. App. D.C. 244).

Where defendant, indicted for sodomy, assault with dangerous weapon and mayhem, neither raised defense of insanity prior to return of jury verdict of guilty nor brought to court's attention prior imprisonment for sex-related crime or attempted suicide while in prison and confinement there for psychiatric treatment, defendant had not been improperly deprived of defense of insanity during trial. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

A person is not responsible for criminal conduct if at the time of such conduct as result of mental disease or defect he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law; overruling *Durham v. United States*, 94 U.S. App. D.C. 228, 214 F. 2d 862. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

Rule that a person is not responsible for criminal conduct if at the time of such conduct as result of mental disease or defect he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law is prospective in its application and applies only to trial commencing after June 23, 1972. *Id.*

Within rule that a person is not responsible for criminal conduct if at the time of such conduct as result of mental disease or defect he lacks substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to requirements of the law, the term "mental disease or defect" includes any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls. *Id.*

A defendant is exculpated if he lacks substantial capacity to appreciate that his conduct is wrongful. *Id.*

Exculpation from guilt is established not by mental disease or defect alone but only if "as result" defendant lacks the substantial capacity required for responsibility. *Id.*

In order to be exculpated from guilt by reason of conduct which results from mental disease or defect, accused must be lacking in substantial capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law at time of such conduct. *Id.*

Instructions

In appropriate case, a defendant may request omission from instruction on defense of insanity of the phrase pertaining to lack of capacity to appreciate wrongfulness, if that particular matter is not involved on the facts, and defendant fears that jury that does not attend rigorously to the details of the instruction may erroneously suppose that the defense is lost if defendant appreciates wrongfulness. *United States v. A. W. Brawner* (1972, 471 F. 2d 969, 153 U.S. App. D.C. 1).

Suggested instruction on defense of insanity in criminal cases is formulated by the court. *Id.*

In instructing that even though defendant did not have abnormal mental condition that absolves him of criminal responsibility, he may have had condition that negatives the specific mental state required for a higher degree of crime, the trial court may not substitute for the term "abnormal mental condition" any other terms such as "mental unsoundness." *Id.*

Mandatory commitment

Where trial court raised the defense of insanity sua sponte and found defendant not guilty by reason of insanity of destroying the property of the United States, trial court was not entitled to automatically commit defendant; the automatic commitment applied only in event the defendant himself raised the defense of insanity. *United States v. B. L. Wright* (1975, 511 F. 2d 1311, 167 U.S. App. D.C. 309).

Negligence

Where on August 11, general hospital to which patient had been committed to determine his competency to stand trial on charge of assaulting his wife reported that patient was suffering from chronic brain syndrome due to actual brain damage, patient was committed to mental hospital and superintendent of mental hospital, on December 19, informed trial court that patient had recovered from mental disorder and was mentally competent to stand trial though mental hospital personnel knew that patient had suffered from organic brain defect and nothing in their evaluation differed from findings reported by general hospital, mental hospital was negligent in failing to transmit adequate information to trial court and United States, of which hospital was an agent, was liable for death of patient's wife who was fatally shot by patient less than two months after his discharge from hospital. *H. M. Hicks et al. v. United States* (1973, 357 F. Supp. 434; aff'd 511 F. 2d 407, 167 U.S. App. D.C. 169).

Psychiatric assistance

Examinations of defendant by government psychiatrists during 15-day confinement at government hospital and 50-minute examination conducted by psychiatrist by order of the court were not equivalent to the indigent defendant's right to psychiatric services necessary to an adequate defense in his case and it was error for trial court to deny defendant's timely request for psychiatric assistance. *United States v. W. J. Chavis, Jr.* (1973, 486 F. 2d 1290, 159 U.S. App. D.C. 30).

Where defendant had right to ex parte hearing on motion for appointment of psychiatrist to aid the defense and prosecutor twice reversed himself on the adequacy of a psychiatric examination of the defendant by legal psychiatric services psychiatrist, it was improper for trial court to deny the motion because the prosecutor intervened to oppose it. *Id.*

Record on appeal

Record on appeal from denial of motion to withdraw guilty pleas, raising serious unanswered questions about whether defendant's decision to plead was materially affected by, inter alia, defense counsel's failure to seek an independent mental examination of defendant, or to call the psychiatrist to testify or the influence of ex parte communications between U.S. Attorney and examining staff, or psychiatrists' failure to file promptly his letters or court's failure to inquire into circumstances surrounding the examination was inadequate for proper consideration of district court's reasons for denying the motion. *United States v. G. M. Morgan* (1973, 482 F. 2d 786, 157 U.S. App. D.C. 197).

§ 24-302. Commitment of mentally ill person while serving sentence.

CROSS REFERENCE

Representation of indigents, see § 11-2601.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-2601.

NOTES TO DECISIONS

In general

Sentence of ten years' imprisonment, and refusal to commit defendant to institution for treatment of sexual

psychopathy, did not constitute cruel and unusual punishment of defendant after conviction of sodomy and assault with dangerous weapon. *E. T. Hughes v. United States* (D.C. App. 1973, 308 A. 2d 238).

Chapter 4.—PRISONS AND PRISONERS

SUBCHAPTER I.—PRISONS

Sec.

24-426. Payment of rewards—Apprehension of prison fugitives and of conditional release and parole violators.

24-427. Discharge and release payments.

SUBCHAPTER I.—PRISONS

§ 24-402. Sentence of prisoners to jail, reformatory, or penitentiary for more than one year—Jurisdiction of Commissioner over prisoners in reformatory—Transfer of prisoners from penitentiary to reformatory.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Rewards for apprehension of prison fugitives, see § 24-426.

§ 24-403. Transfer of prisoners from jail to workhouse.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-411. Superintendent and all other employees—Appointment—Discharge—Supervision of Board of Public Welfare.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-412. Employment of prisoners.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-417. Superintendent required to execute judgments in capital cases—Failure of Congress to make specific appropriation not abolition of position or repeal of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-418. Sale of products of workhouse and reformatory.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-418a. Sale of gun mountings to States of the Union and their political subdivisions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-420. Grounds of jail increased.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-425. Place of imprisonment—Designation by Attorney General—Transfer.

NOTES TO DECISIONS

Escape from custody of Attorney General

Evidence that defendant was sentenced, upon his conviction of robbery, to the custody of the Attorney General for a specified term, that he served part of his sentence at reformatory, that he was then admitted to a halfway house run by a nonprofit organization operating under a contract with the Department of Corrections, and that, after being told he was to be returned to the reformatory for a "violation," he left the halfway house without permission established an escape from the Attorney General's legal custody to which defendant was remitted at the time of sentence, and which continued even when he was assigned to a facility not under the control of the Department of Justice. *United States v. J. I. Taylor* (1973, 485 F. 2d 1077, 158 U.S. App. D.C. 298).

§ 24-426. Payment of rewards—Apprehension of prison fugitives and of conditional release and parole violators.

The Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized to provide for the payment of rewards for the capture, or for information leading to the apprehension, of fugitives from District of Columbia penal, correctional, and welfare institutions and of conditional release and parole violators. Funds appropriated pursuant to this section shall be apportioned and expended in the discretion of, and upon such conditions as may be imposed by, the Mayor of the District of Columbia. No reward money shall be paid to any officer or employee of the Metropolitan Police Department, or of any penal, correctional, or welfare institution, or of any court, legal agency, or other agency closely involved in the criminal justice system. (Oct. 26, 1973, Pub. L. 93-140, § 11, 87 Stat. 506.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Police officers prohibited from receiving compensation from person arrested or liable for arrest, see § 4-175.

Rewards, presents, fees, or emoluments to police officers, general prohibition, see § 4-129.

APPROPRIATIONS

See note under § 1-226a.

§ 24-427. Discharge and release payments.

The Mayor of the District of Columbia is authorized to furnish each prisoner upon his release from a penal or correctional institution under the jurisdiction of the government of the District of Columbia with suitable clothing and, in the discretion of the Mayor, a sum of money, which shall not exceed \$100. (Oct. 26, 1973, Pub. L. 93-140, § 12, 87 Stat. 506.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

SUBCHAPTER II.—DEPARTMENT OF CORRECTIONS

§ 24-441. Department of Corrections created—Director.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-442. Powers of Department over institutions—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Apprehension of prison fugitives and of conditional release and parole violations, prohibition on payment of rewards to officers and employees of Department of Corrections, see § 24-426.

Pistol matches, attendance by officers and employees of Department of Corrections, see § 4-189.

NOTES TO DECISIONS

Duty owed to inmates—Evidence

Plaintiff suing District of Columbia for injuries he received while inmate in Lorton Reformatory was not required to prove that District of Columbia owned and operated Lorton Reformatory, since such fact should have been judicially noticed on basis of common knowledge or statutory enactment. *J. L. Gaither, Jr. v. District of Columbia* (D.C. App. 1975, 333 A. 2d 57).

—Jury question

Whether guard at Lorton Reformatory breached duty to inmate on theory that guard knew of odor of gas near

gas burner under coffee urn yet ordered inmate to light the burner is jury question, in action against District of Columbia for injuries received. *J. L. Gaither, Jr. v. District of Columbia* (D.C. App. 1975, 333 A. 2d 57).

Jurisdiction

To have a single decree binding on all prisons in District of Columbia's prison system, to achieve uniformity in treatment of inmates, and to provide for supervision of administrator of district correctional system by single court which imposed sentences, District Court for Eastern District of Virginia should decline to decide class action by inmates of Lorton Reformatory, located in Virginia but part of District of Columbia prison system, complaining that disciplinary proceedings denied due process rights and should transfer cause to District Court of District of Columbia. *N. Wright, III, et al. v. D. C. Jackson et al.* (1974, 505 F. 2d 1229).

§ 24-443. Board of Public Welfare powers transferred to Department—Officers and employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-444. Rules and regulations of Board of Public Welfare in effect.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-445. Contracts of Board of Public Welfare not invalidated—Appropriations available.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER III.—CORRECTIONAL INDUSTRIES FUND

§ 24-452. Availability of fund for performance of services and production of commodities for rehabilitation of inmates—Accounting for the fund.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-453. Sale of products and services to District, Federal and State governments—Receipts from sales to be deposited in fund—Use of funds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-454. Reports of financial condition and results of operations to be made by Director of the Department of Corrections to Commissioner—Disposition of realized profits—Net worth of fund not to be increased beyond \$2,500,000—Payments to inmates and their dependents—Excess profits to be deposited to general funds of the District.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER IV.—WORK RELEASE PROGRAM

§ 24-461. Authority to establish program for minor offenders—Grant of privilege in special circumstances.

NOTES TO DECISIONS

Abuse of discretion

Assuming that petitioner claiming denial of constitutional rights meant to cite the D.C. statute establishing a work release program, it could not be held that district court abused discretion in finding that there were no special circumstances which merited the granting of work release privilege to petitioner. *L. I. Green v. United States* (1973, 481 F.2d 1140, 157 U.S. App. D.C. 40).

Application

District of Columbia Work Release Act applies only to three enumerated classes of persons imprisoned for minor offenses, not to imprisoned felons; as to the latter, work release is granted at the discretion of the Attorney General under the provisions of federal statute. *R. Contee v. United States* (D.C. App. 1974, 315 A.2d 149).

§ 24-462. Recommendations—Requests for privilege—Necessity for order of sentencing court.

NOTES TO DECISIONS

Court order

Placement in work release program is available only by court order. *J. E. Armstead v. United States* (D.C. App. 1973, 310 A.2d 255).

Misdemeanant's sentence of "six months with narcotic treatment in vocational rehabilitation" did not constitute explicit court order necessary for valid placement of misdemeanant in work release program. *Id.*

Department of Corrections is not privileged to interpret ambiguous order of trial judge as authorizing work release when order does not specifically so provide. *Id.*

§ 24-463. Terms and conditions for release to be provided in court order.

NOTES TO DECISIONS

Abuse of discretion

Assuming that petitioner claiming denial of constitutional rights meant to cite the D.C. statute establishing a work release program, it could not be held that district court abused discretion in finding that there were no special circumstances which merited the granting of work release privilege to petitioner. *L. I. Green v. United States* (1973, 481 F.2d 1140, 157 U.S. App. D.C. 40).

Court order

Placement in work release program is available only by court order. *J. E. Armstead v. United States* (D.C. App. 1973, 310 A.2d 255).

Misdemeanant's sentence of "six months with narcotic treatment in vocational rehabilitation" did not constitute explicit court order necessary for valid placement of misdemeanant in work release program. *Id.*

Department of Corrections is not privileged to interpret ambiguous order of trial judge as authorizing work release when order does not specifically so provide. *Id.*

§ 24-464. Rules and regulations—Individual plans for each prisoner granted privilege.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-465. Punishment of prisoner for failure to comply with plan—Prosecution by Corporation Counsel.

CROSS REFERENCE

Rewards for apprehension of conditional release and parole violators, see § 24-426.

NOTES TO DECISIONS

Prosecution

Defendants, who, in course of serving sentences for felonies, were transferred to a half-way house, were guilty of escape from penal institution when they felt the half-way house and did not return. *United States v. M. Venable* (D.C. App. 1974, 316 A.2d 857).

Misdemeanant who was placed in halfway house for participation in work release program due to administrative error rather than by court order required for valid placement, and who left and failed to return to halfway house, was properly prosecuted under § 22-2601 which prescribes punishment for escape from penal institution rather than the section which prescribes punishment for violation of work release plan. *J. E. Armstead v. United States* (D.C. App. 1973, 310 A.2d 255).

Revocation of probation

Where defendant convicted of attempted petit larceny was sentenced to imprisonment for 365 days, of which 180 days was to be served under work release program and the remainder suspended, and work release was to be followed by one year's probation, and defendant arrived at halfway house but that same evening left and did not return, sentencing court had power, after adequate hearing at which defendant was represented by counsel, to vacate prior order suspending sentence, and to revoke probation, through statute provided for modification of terms and conditions of order of probation at any time "during the probationary term." *J. Wright v. United States* (D.C. App. 1974, 315 A.2d 839).

§ 24-466. Collection of earnings—Deposit in trust fund—Immunity from attachment—Disbursements—Payment of balance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-467. Method of payments for support of dependents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-468. Authority of Attorney General to designate Commissioner to perform functions vested under section 24-425, for purposes of this subchapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by

Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-469. Authority under Reorganization Plan not affected—Delegation of functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—REHABILITATION OF ALCOHOLICS

§ 24-522. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-523. Public health program for intoxicated persons and chronic alcoholics—Detoxification centers and other facilities—Delegation of functions by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-524. Procedures for dealing with persons who are found intoxicated in public—Filing of criminal charges against chronic alcoholics—Dealing with intoxicated persons who violate certain laws—Records of detoxification center to be confidential.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-526. Outpatient treatment of chronic alcoholics—Medical director to determine who shall be admitted for outpatient treatment—Care of chronic alcoholics for whom recovery is unlikely—Compulsory participation not permitted, except by Court order.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-527. Commitment of chronic alcoholics by Court order for treatment—Hearing and findings required before commitment—Writ of habeas corpus—Right to counsel—Term of commitment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Representation of indigents by Public Defender Service, see § 2-2222.

§ 24-529. Commissioner may contract with appropriate public or private organizations to carry out purposes of this chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-530. Programs for the prevention and treatment of alcoholism and rehabilitation of alcoholics among District employees and in private industry.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-531. Program for the prevention and treatment of alcoholism and rehabilitation of alcoholics in correctional institutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-532. Program for the prevention of alcoholism and the treatment and rehabilitation of incipient alcoholics among juveniles and young adults.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-533. Evaluation of programs for treatment of chronic alcoholics—Recommendations to Congress by Commissioner—Publication of data and statistics—Implementation of objectives of this chapter—Use of Federal funds, programs and facilities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-534. Liability for cost of treatment—Procedures for determining liability and ability to pay—Waiver of liability, by Commissioner, in certain cases—Actions to recover cost of treatment—Deposit into United States Treasury of sums collected.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

COMMISSIONER'S ORDER GOVERNING REIMBURSEMENT FOR TREATMENT SERVICES PROVIDED TO ALCOHOLIC PATIENTS BY THE D.C. GOVERNMENT

Commissioner's Order No. 74-23, Jan. 31, 1974, ORDERED:

1. That this Order governs the reimbursement policy for treatment services provided to alcoholic patients by the District of Columbia Government in accordance with the provisions of Section 14 of Public Law 90-452, D.C. Code Supplement II 24-534, the District of Columbia Alcoholic Rehabilitation Act of 1967, which requires that any person who receives such treatment is required to reimburse the District of Columbia for all or such part of the actual cost of providing such services as the Commissioner or his designated representative may require; and,

2. That the Director of Human Resources is hereby delegated the authority and responsibility to carry out this Order and to promulgate the necessary administrative directives. In this connection:

a. He shall, through his designated representative, enter into contracts for reimbursement of treatment costs in the name of the District of Columbia Government with persons liable or willing to assume responsibility for payment for treatment furnished under the provisions of this Order; and furthermore,

b. Because Congress further provided that administrative exceptions could be made where the Commissioner or his designated representative waived this reimbursement liability as being unreasonable in certain cases, he may waive, or authorize his designated representative to waive, liability under this Order governing eligibility and standards of payment for treatment of alcoholic patients whenever in his opinion circumstances warrant such action, *provided* that a record of each such waiver shall be kept in a special file in the Department of Human Resources and shall be made available to such reviewing bodies as the Commissioner may designate; and

c. He shall review this Order at intervals not to exceed one year and recommend to the Commissioner of the District of Columbia such revisions as may be indicated. Changes in per diem rates only may exceed this interval if required.

A. Standards for Payment

1. Liability for payment for the treatment given to alcoholic patients will be determined, according to ability to pay, in the following order:

- a. Person receiving treatment (or his estate)
- b. Father
- c. Mother
- d. Spouse
- e. Adult Children

2. Determination of ability to pay shall take into consideration income and resources such as liquid assets, compensation, or insurance. The ability to pay of the patient and legally responsible relatives shall be determined in accordance with income standards and administrative guidelines established by the Director of Human Resources. The patient, or his responsible relative, shall be required to sign a contract to meet the agreed terms of payment. This contract may be renegotiated whenever any change of factors occurs upon which the original patient contract was based and will be effective as of the date of renegotiation.

3. Treatment services provided to alcoholic patients will be provided at the expense of the District of Columbia to all patients for the first month. After the first month, patients of the Rehabilitation Center for Alcoholics with a gross income between \$100 and \$600 a month shall be charged at the rate of 20% of their monthly income or \$4.00 per day, whichever is less. Patients with a gross income of \$600 a month, or with sufficient liquid assets as determined by the Director of Human Resources, shall be charged at the rate of 20% of their income or \$18.25 per day, whichever is less. In cases where patients are unable to pay, the responsible relative (as listed in Paragraph 1) of alcoholic patients shall be charged for the cost of treatment on the same basis as patients.

B. Effective Date

The provisions of this Order shall be effective on 2-1-74.

§ 24-535. Donations of services and gifts—Deposit of gifts in a trust fund account in the Treasury of the United States—Use of gifts, by Commissioner, to carry out purposes of this chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—REHABILITATION OF USERS OF NARCOTICS

§ 24-601. Purpose.

NOTES TO DECISIONS

Construction

District of Columbia's "Rehabilitation of Users of Narcotics" statute provision, stating that the statute shall not be used to substitute treatment for punishment in cases of crime committed by drug users, means that, when the Government is able successfully to prosecute any drug user for a criminal offense under any federal statute, it may do so. *United States v. R. Moore* (1973, 486 F. 2d 1139, 158 U.S. App. D.C. 375; cert. denied 94 S. Ct. 298, 414 U.S. 980).

§ 24-602. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Addition as defense to criminal prosecution

Decision permitting a defendant charged with possession of narcotics and narcotics paraphernalia to raise affirmative defense that he lacked capacity to refrain from using narcotics by reason of drug addiction cannot be rested on trial court record which does not disclose basis for expert witness' conclusion that defendant had an overwhelming compulsion psychologically to use heroin and there was no showing whether finding of addiction related to criminal responsibility or only to habitual use. *W. R. Franklin v. United States* (D.C. App. 1975, 339 A.2d 398).

§ 24-603. Order of examination.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-605. Examinations by physicians.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-607. Hearing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-608. Confinement of patient.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-610. Periodic examination of released patients.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-613. Care and treatment of drug users—Authority of the Surgeon General.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

**Chapter 7.—INTERSTATE AGREEMENT
ON DETAINERS**

§ 24-702. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 24-704. Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

PART V

GENERAL STATUTES

TITLE 25—ALCOHOLIC BEVERAGES.
TITLE 26—BANKS AND OTHER FINANCIAL INSTITUTIONS.
TITLE 27—CEMETERIES AND CREMATORIES.
TITLE 28—COMMERCIAL INSTRUMENTS AND TRANSACTIONS.
TITLE 29—CORPORATIONS.
TITLE 30—DOMESTIC RELATIONS.
TITLE 31—EDUCATION AND CULTURAL INSTITUTIONS.
TITLE 32—ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS.
TITLE 33—FOOD AND DRUGS.
TITLE 34—HOTELS AND LODGING-HOUSES.
TITLE 35—INSURANCE.
TITLE 36—LABOR.

TITLE 37—LIBRARIES.
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TITLE 47—TAXATION AND FISCAL AFFAIRS.
TITLE 48—TRADE-MARKS AND TRADE NAMES.
TITLE 49—COMPILATION AND CONSTRUCTION OF CODE.

TITLE 25.—ALCOHOLIC BEVERAGES

Chapter 1.—ALCOHOLIC BEVERAGE CONTROL

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47-504.

§ 25-103. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-104. Alcoholic Beverage Control Board—Appointment—Term—Employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-106. Jurisdiction of Board over licenses—Appeal from revocation—Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-107. Powers of Council—Rules and regulations—Licenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 25-111. License classifications—Fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 25-112. Authority of Council to forbid transportation of liquor into District—Permit may be granted.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-115. Applications for licenses—Qualification of applicants—Moral character—Citizenship—Prior convictions—Ownership—Interest of manufacturer in retail business—Character of premises—Advertising application—Hearing of protests—Objection of property owners—Removal of bonded liquor from Government warehouses—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Findings of fact—Sufficiency

Findings and conclusions of law by Alcoholic Beverage Control Board that there were sufficient off-street parking facilities to serve patrons of applicant for retailer's class C liquor license, that adequate valet service for parking would be available, that it was not shown that issuance of license would cause increase in trash and litter in the area and that premises were appropriate for issuance of license were supported by substantial evidence. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 323 A.2d 715).

Detailed recitation of testimony and conclusionary statements of District of Columbia Alcoholic Beverage Control Board's view of such testimony as establishing entitlement to retailer's class C alcoholic beverages license were too inadequate to permit review, and remand was necessary. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 316 A.2d 865).

Notice

Where, on petition for review of order of Alcoholic Beverage Control Board granting application to transfer alcoholic beverage retailer's license, petitioners were present and accorded fair opportunity to be heard, they could not complain that statutory requirements were not satisfied because there was no indication in Board's decision that required notice of hearing was ever published. *R. F. Schiffmann et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A.2d 235).

In case of hearing on application to transfer alcoholic beverage retailer's license, better practice would have been for the board to have included in record copies of notice of publication required by statute. *Id.*

Objections

On petition for review of order granting application for transfer of retail liquor license, evidence did not support claim that Alcoholic Beverage Control Board had furnished petitioners with ambiguous and misleading instructions for preparation of protest petitions. *R. F. Schiffmann et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A.2d 235).

Prejudicial error

Record on review established no prejudicial error in Alcoholic Beverage Control Board's compliance with court's prior decision, amounting to substantial compliance with order that Board take further proceedings and enter into record all information which would be relevant and material to statutory criteria for issuance or denial of license and which would be relied upon in any degree by the Board. *Citizens Association of Georgetown, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 305 A.2d 861).

§ 25-117. Transfer of license—Fee—Conditions imposed.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

NOTES TO DECISIONS

Administrative procedure

Where Alcoholic Beverage Control Board personally inspected premises and, subsequent to hearing on application for transfer of license and not in presence of parties, measured area to see if proposed liquor store violated regulation prohibiting liquor store within 400 feet of recreational area entrance then requested remand to

remedy procedural defects but limited remand to question of measurements without setting forth facts revealed by personal inspection and giving parties opportunity to address themselves to those facts when decision as to main entrance was based on both testimony and personal inspection, Board's refusal to admit further testimony at remand hearing on question of main entrance was error. *Northeast Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A.2d 222).

Construction

In enacting this section providing that Board of Alcoholic Beverage Control, " * * shall not allow the transfer of the license of any person against whom there is pending in the courts or before the Board any charge of keeping a disorderly house, or of violating this chapter or the laws against gambling in the District of Columbia," Congress sought to prevent transfer "by the licensee" when said licensee has charges pending against him, and said proviso does not apply to cases where transfer is sought by someone other than the present license holder. *D. Hornstein et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 321 A.2d 567).

Evil sought to be prevented by section providing that Board of Alcoholic Beverage Control " * * shall not allow the transfer of the license of any person against whom" charges are pending, was transfer by licensee who is the putative subject of revocation or suspension. *Id.*

Due process

There was no denial of due process in Alcoholic Beverage Control Board's scheduling of hearing on protest of transfer of liquor license ten days prior to the resignation of one of its members, even if members knew that said member would be resigning. *Palisades Citizens Association v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 324 A.2d 692).

Findings of fact

No written findings were required for disposition of petition for reconsideration of transfer order entered by Alcoholic Beverage Control Board. *Palisades Citizens Association v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 324 A.2d 692).

Judicial review

On petition for review of order of Alcoholic Beverage Control Board granting application for transfer of alcoholic beverage retailer's license, Court of Appeals may not disturb any action of Board in exercise of its statutory powers unless such action is plainly wrong or without support in substantial evidence in administrative record. *R. F. Schiffmann et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A.2d 235).

Moral character

Due process requires information in Alcoholic Beverage Control Board's confidential file concerning an applicant's moral fitness and good character to be made available to parties as part of the record. *Northeast Liquors, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A.2d 222).

Ordinarily, party opposing transfer of liquor license has burden of showing change in circumstances relating to the applicant's moral character. *Id.*

Where case concerns application for transfer of liquor license rather than initial granting of license, appellate court must presume that matter of applicant's moral character was determined by the Board when original license was issued. *Id.*

In absence of any evidence in record as to whether confidential information concerning applicant's moral character was made available to party opposing transfer of applicant's liquor license at hearing, decision of the Board allowing transfer of license would be remanded. *Id.*

Notice

Where, on petition for review of order of Alcoholic Beverage Control Board granting application to transfer alcoholic beverage retailer's license, petitioners were present and accorded fair opportunity to be heard, they could not complain that statutory requirements were not satis-

fied because there was no indication in Board's decision that required notice of hearing was ever published. *R. F. Schiffmann et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A. 2d 235).

In case of hearing on application to transfer alcoholic beverage retailer's license, better practice would have been for the Board to have included in record copies of notice of publication required by statute. *Id.*

Objections

On petition for review of order granting application for transfer of retail liquor license, evidence did not support claim that Alcoholic Beverage Control Board had furnished petitioners with ambiguous and misleading instructions for preparation of protest petitions. *R. F. Schiffmann et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1973, 302 A. 2d 235).

Remand

Where Court of Appeals could not determine from the record whether Alcoholic Beverage Control Board's decision denying petition for reconsideration of transfer order had been issued while there was a quorum on the Board, case was remanded to the Board to determine whether such quorum existed. *Palisades Citizens Association v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 324 A.2d 692).

Transfer of license

Where mortgage holders of liquor business purchased business at foreclosure sale when the licensee ceased to do business on the premises as a result of charges against its officers of permitting illegal activity on the premises, and sought transfer of licensee's liquor license, this section providing that Board of Alcoholic Beverage Control " * * shall not allow the transfer of the license of any person against whom charges are pending," did not prevent requested transfer of liquor license to mortgage holders. *D. Hornstein et al. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 321 A.2d 567).

§ 25-118. Revocation of license—Causes—Hearing—Discretionary closing for one year.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Discretion of Board

Revocation of petitioner's retailer's Class "C" alcoholic beverage license by Alcoholic Beverage Control Board was not an abuse of discretion, despite claim that, in imposing sanction, Board treated petitioner differently than others in similar situations and, in so doing, ignored its own precedents and procedures and failed to justify different treatment accorded petitioner, where petitioner admitted charges alleging unlawful receipt and possession of unstamped distilled spirits, concealment of goods on restaurant premises with intent to defeat collection of taxes (both felonies), failing to superintend business, and permitting an unregistered .22 caliber rifle to be kept on premises. *Alrob Enterprises, Inc. v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1975, 337 A.2d 497).

Fifteen-day suspension of liquor license when doorman refused to permit entry of police officers unless each paid a \$2 admission charge though he was told that they were on official business and identification was displayed, and when manager of the premises failed to intervene to provide officers with full opportunity to examine the premises as required by regulations, was within Alcoholic Beverage Control Board's statutory authority and discretion, despite contention that, when compared with sanctions imposed in other cases, such suspension failed to accord licensee equal protection, equal justice, and due process. *The Meteor Corporation v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 316 A.2d 545).

Review

Where findings of Alcoholic Beverage Control Board on which it based suspension of license were supported by substantial evidence, reviewing court was not at liberty to disturb the Board's action. *The Meteor Corporation v. District of Columbia Alcoholic Beverage Control Board* (D.C. App. 1974, 316 A.2d 545).

§ 25-119. Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-120. Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-121. Sale to minors or intoxicated persons—Liability of licensee.

NOTES TO DECISIONS

Civil liability

Complaint which was brought by victim of shooting committed by District of Columbia police officer and which alleged that bar owner violated a statutory duty owed to the victim by serving the officer at time when it was known or should have been known that the officer was intoxicated and might pose a danger to others stated a cause of action against the bar owner. *D. S. Marusa v. District of Columbia et al.* (1973, 484 F. 2d 828, 157 U.S. App. D.C. 348).

In order for violation of a criminal law or regulation to create civil liability, the law or regulation should generally be one designed to promote safety, plaintiff must be a member of class to be protected by the statute and defendant must be person upon whom the statute imposes specific duties. *Id.*

§ 25-123. Monthly reports of sales and purchases.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-124. Beverage taxes—Method of collection—Class C or D licensees—Reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 25-131. Issuance of new permits under Beverage License Act of 1933 forbidden—Surrender of permit and refund of fees—Repeal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 25-138. Tax on beer.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

Chapter 3.—TRUST, LOAN, MORTGAGE, SAFE DEPOSIT AND TITLE CORPORATIONS

§ 26-305. District of Columbia Council may grant or refuse charter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-306. Notice of application to Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-307. Recording charter—Certificate to be secured from Comptroller of Currency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—MONEY LENDERS—LICENSES

§ 26-601. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Illegal contracts—Coverage by insurance

If title insurance policy insuring lender and its successors in interest against any defect in execution of deed of trust covered loss caused by lender's violation of Loan Shark Law [this chapter] enforcement of the policy by successor in interest would not contravene public policy, where successor in interest should have known that loan transaction violated Loan Shark Law, but could not have had subjective knowledge of any violation. *Hartford Life Insurance Co. v. Title Guarantee Co. et al.* (1975, 520 F.2d 1170, 172 U.S. App. D.C. 156).

Injunctions

Plaintiff, which brought suit seeking cancellation of note and deed of trust or, in the alternative, revision of note and trust, and which could obtain the relief sought only by asserting and establishing the unconstitutionality of federal statute, was not entitled to issuance of a preliminary injunction restraining foreclosure pending final action on the complaint, since the statute upon which plaintiff was relying was presumptively constitutional

and since plaintiff failed to establish a likelihood or probability of success on the merits. *Murray Co. v. National Mortgage Corporation et al.* (D.C. App. 1973, 299 A.2d 147).

§ 26-602. Application for license filed with Commissioner—Contents of application—Date and expiration of license—Notice of application posted and published—Protests—Hearings—Rejection of application.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-603. Bond to accompany application—Sureties—Actions on bond—Copy of bond to be furnished upon request—Renewal of bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-604. Register to be kept—Contents—Inspection of register—Annual statements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-606. Complaints—Hearings on complaints—Record of hearings—Revoking of, or refusal to grant license.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-607. Penalties—Enforcement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-610. Persons, associations, and corporations exempt from operation of this chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-611. Commissioner to enforce—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 26-612. Loans exempt from provisions of this chapter.

NOTES TO DECISIONS

Injunctions

Plaintiff, which brought suit seeking cancellation of note and deed of trust or, in the alternative, revision of note and trust, and which could obtain the relief sought only by asserting and establishing the unconstitutionality of federal statute, was not entitled to issuance of a preliminary injunction restraining foreclosure pending final action on the complaint, since the statute upon which plaintiff was relying was presumptively constitutional and since plaintiff failed to establish a likelihood or probability of success on the merits. *Murray Co. v. National Mortgage Corporation et al.* (D.C. App. 1973, 299 A. 2d 147).

TITLE 27.—CEMETERIES AND CREMATORIES

Chapter 1.—CEMETERY ASSOCIATIONS—REGULATORY PROVISIONS

§ 27-105. Duty to inclose and underdrain.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-112. Dedication of land—Title vested in perpetuity.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-114. Distance from city and from dwellings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-114a. Commissioner authorized to license certain lands for cemetery purposes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-119a. Disposal of dead bodies—Permits required—Movement and disposition of tissue by tissue banks—Violations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-121. Place of burial.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-124. Crematories—Consent of property owners—Permit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-128. Disinterment by order of court.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 27-129. Public crematory—Cremation required in certain cases.

CROSS REFERENCES

Funeral and burial at public expense,
Notice and removal of body, see § 2-202.
Indigents and wards of District, see § 3-213a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3-213a, 27-131.

§ 27-130. Establishment of crematory—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3-213a, 27-131.

§ 27-131. Act for promotion of anatomical science not affected by crematory law.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3-213a.

TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

Uniform Commercial Code set out herein as subtitle I, was enacted into law on Dec. 30, 1963, by Pub. L. 88-243, 77 Stat. 630, § 1, effective Jan. 1, 1965

SUBTITLE I.—UNIFORM COMMERCIAL CODE

Article 1.—GENERAL PROVISIONS

PART 1.—SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER

§ 28:1-103. Supplementary general principles of law applicable

NOTES TO DECISIONS

General

When Uniform Commercial Code did not apply to precise situation, i.e., where bank paid checks lacking one of two required signatures and made disbursements of loan advances contrary to loan agreement, general contract principles governed, and defenses of contributory negligence and proximate cause were not available. *G & R Corporation, et al. v. American Security & Trust Company* (1975, 523 F.2d 1164, 173 U.S. App. D.C. 215).

PART 2.—GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

§ 28:1-201. General definitions

NOTES TO DECISIONS

Good faith

Willful ignorance or failure by person in possession of a note to inquire may, for purposes of determining whether he is a holder in due course, negate good faith. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

§ 28:1-207. Performance or acceptance under reservation of rights

NOTES TO DECISIONS

Special circumstances

Indefinite quantity contract for mobile generator sets did not involve such special circumstances as to prevent application of doctrine that performance of otherwise unenforceable contract rendered contract enforceable. *Federal Electric Corporation v. United States* (1973, 486 F. 2d 1377, 202 Ct.Cl. 1028).

Article 2.—SALES

PART 3.—GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

§ 28:2-302. Unconscionable contract or clause

NOTES TO DECISIONS

Unconscionable contract

Where contract price paid to corporation under home improvement contracts was usually at least double the cost and reasonable profit to contractor, such contracts were unconscionable for purposes of raising defense against holders of notes arising out of financing of such contracts. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

§ 28:2-313. Express warranties by affirmation, promise, description, sample

NOTES TO DECISIONS

Representations

Representation made by reputable brewer of beer to distributor of carbon dioxide that the surplus carbon dioxide brewer was willing to sell to distributor was from time to time used by brewer in the manufacture of its own beer was a representation on which the distributor was entitled to rely on as a matter of fact. *Rock Creek Ginger Ale Company, Inc. v. Thermice Corporation* (1971, 352 F. Supp. 522).

Samples

Where distributor of carbon dioxide entered into negotiations for purchase of surplus carbon dioxide of brewer and demanded and was furnished a sample which distributor tested and found of satisfactory quality and odor free and past deliveries aggregating over 700,000 pounds of carbon dioxide had been picked up by buyer-distributor from brewer with no deviation from quality of sample or any objectionable odor which formed basis of suit by bottler against distributor, sample must be considered as describing values of goods contracted for from brewer in absence of a clear, convincing and unmistakable denial of such responsibility. *Rock Creek Ginger Ale Company, Inc. v. Thermice Corporation* (1971, 352 F. Supp. 522).

§ 28:2-314. Implied warranty: merchantability; usage of trade

NOTES TO DECISIONS

Automobiles

When purchaser acquired new automobile there was by operation of law an implied warranty from both the manufacturer and dealer that the automobile was fit and suitable for the ordinary purposes for which an automobile is sold and used. *B. Williams v. Steuart Motor Company et ano.* (1974, 494 F. 2d 1074, 161 U.S. App. D.C. 155).

Merchant

Where distributor of carbon dioxide negotiated the purchase of brewer's surplus carbon dioxide, sales of carbon dioxide by brewer, which was a beer manufacturer and not merchant of carbon dioxide, was not subject to implied warranties of merchantability. *Rock Creek Ginger Ale Company, Inc. v. Thermice Corporation* (1971, 352 F. Supp. 522).

Warranty

Seller's implied warranty of merchantability of gas air conditioner was effective prior to expiration of seller's express manufacturer's warranty where such express warranty contained no language, which excluded or modified the implied warranty. *K. R. Lee, Jr. et ano. v. Air Care, Inc.* (D.C. App. 1974, 325 A. 2d 598).

§ 28:2-316. Exclusion or modification of warranties

NOTES TO DECISIONS

Exclusion or modification

Seller's implied warranty of merchantability of gas air conditioner was effective prior to expiration of seller's express manufacturer's warranty where such express warranty contained no language, which excluded or modified

the implied warranty, and was not inconsistent with the implied warranty. *K. R. Lee, Jr. et ano. v. Air Care, Inc.* (D.C. App. 1974, 325 A.2d 598).

Limitation of liability

Warranty and limitation of liability clauses which restrict buyer's remedies to repair and replacement of non-conforming parts and limit manufacturer seller's liability regardless of its negligence in causing such nonconformities are valid and enforceable. *Potomac Electric Power Company v. Westinghouse Electric Corporation* (1974, 385 F. Supp. 572).

§ 28:2-317. Cumulation and conflict of warranties express or implied

NOTES TO DECISIONS

Cumulative warranties

Seller's implied warranty of merchantability of gas air conditioner was effective prior to expiration of seller's express manufacturer's warranty where such express warranty contained no language, which excluded or modified the implied warranty, and was not inconsistent with the implied warranty. *K. R. Lee, Jr. et ano. v. Air Care, Inc.* (D.C. App. 1974, 325 A.2d 598).

PART 6.—BREACH, REPUDIATION AND EXCUSE

§ 28:2-607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over

NOTES TO DECISIONS

Notice of breach

Assuming applicability of this section requiring buyer to notify seller of breach within a reasonable time, with respect to carbon dioxide distributor, found liable in damages for delivery of defective carbon dioxide to bottler and bringing third-party complaint against brewer which sold carbon dioxide to distributor which neither sought to return the goods or to receive a rebate because of the defect, notice to brewer, from which distributor was making weekly pickups, of defect in carbon dioxide within a week of the time distributor learned of the defect was reasonable and in compliance with this section. *Rock Creek Ginger Ale Company, Inc. v. Thermice Corporation* (1971, 352 F. Supp. 522).

PART 7.—REMEDIES

§ 28:2-706. Seller's resale including contract for resale

NOTES TO DECISIONS

Mitigated damages

Where bank disbursed joint venture funds on one signature instead of two as required and joint venturer suffered loss, transfer of investment realty to such joint venturer by other joint venturer, who had diverted the funds, could be said to have been caused by bank's breach of contract, and any profit on immediate resale of such investment realty would have mitigated damages payable by bank, but profits realized by resale three years later did not. *G & R Corporation, et al. v. American Security & Trust Company* (1975, 523 F.2d 1164, 173 U.S. App. D.C. 215).

§ 28:2-712. "Cover"; buyer's procurement of substitute goods

NOTES TO DECISIONS

Mitigated damages

Where bank disbursed joint venture funds on one signature instead of two as required and joint venturer suffered loss, transfer of investment realty to such joint venturer by other joint venturer, who had diverted the funds, could be said to have been caused by bank's breach of contract, and any profit on immediate resale of such investment realty would have mitigated damages payable by bank, but profits realized by resale three years later did not. *G & R Corporation, et al. v. American Security & Trust Company* (1975, 523 F.2d 1164, 173 U.S. App. D.C. 215).

§ 28:2-715. Buyer's incidental and consequential damages

NOTES TO DECISIONS

Consequential damages

Where manufacturer seller had continuously exerted its best efforts to correct problem which caused turbine generator to suffer from excessive heat rate, and where turbine generator was still operative and where increased fuel costs due to heat rate were not excessive, damages for increased heat costs were consequential and not recoverable from manufacturer seller where warranty provision of sales contract specifically limited liability to replacement of parts. *Potomac Electric Power Company v. Westinghouse Electric Corporation* (1974, 385 F. Supp. 572).

§ 28:2-719. Contractual modification or limitation of remedy

NOTES TO DECISIONS

Limitation of liability

Warranty and limitation of liability clauses which restrict buyer's remedies to repair and replacement of non-conforming parts and limit manufacturer seller's liability regardless of its negligence in causing such nonconformities are valid and enforceable. *Potomac Electric Power Company v. Westinghouse Electric Corporation* (1974, 385 F. Supp. 572).

§ 28:2-725. Statute of limitations in contracts for sale

CROSS REFERENCE

Limitation of actions, generally, see § 12-301.

NOTES TO DECISIONS

Costs on appeal

Where appeal by plaintiff purchaser of automobile, in action for breach of contract against automobile dealer and manufacturer, in which action judgment had been entered for defendants on grounds that action was commenced more than six years after purchase of the automobile and thus was barred by the statute of limitations, was completely lacking in substance, appeal would be dismissed as frivolous and double costs would be assessed against purchaser. *E. E. Tolson, Jr. v. Handley Ford, Inc. et ano.* (D.C. App. 1973, 304 A.2d 634).

Article 3.—COMMERCIAL PAPER

PART 3.—RIGHTS OF A HOLDER

§ 28:3-302. Holder in due course

NOTES TO DECISIONS

Alleged fraud

In view of the apparent inconsistency in district court findings and because record showed that defendant purchased note on recommendation of his accountant action to enjoin sale of plaintiff's home to satisfy lien of deed of trust was remanded to district court for development of additional information in determining whether defendant was a holder in due course with respect to whom claims of fraud in procurement of note and usury would not be valid defenses. *J. M. Warren v. A. Lopatin et al.* (1973, 475 F.2d 1329, 155 U.S. App. D.C. 60).

Burden of proof

Burden of proof rests on person claiming to be immune from certain defenses to note on ground that he is a holder in due course even if entire transaction occurred prior to effective date of the UCC, and to sustain such burden he must demonstrate that he has taken the instrument for value, in good faith and without notice of any defense against it on the part of any person. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

Fraud

Failure of real estate broker, who was supposedly acting as agent for homeowners to obtain financing for home improvement contracts and who knew that scheme to defraud was in operation, that charges to be made by corporation for improvements to be made were grossly excessive and that false representations might well have

been used as part of corporation's high pressure tactics, to disclose such knowledge to homeowners was, for purposes of raising defense against holders of notes arising out of financing of such contracts, as much a fraud as affirmative misrepresentation. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

Good faith

Willful ignorance or failure by person in possession of a note to inquire may, for purposes of determining whether he is a holder in due course, negate good faith. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

Where associations, which refinanced mortgages so as to finance unconscionable home improvement contracts, knew that many of homeowners were of limited intelligence and were being refinanced out of notes with lower interest rates of monthly payments and where such associations were concerned solely with sufficiency of their security and did not inquire into bona fides and contract requirements and settlements adjustments, associations had not acted in good faith and thus were not "holders in due course" of homeowners' first trust notes and were not immune from defenses of fraud in the inducement, unconscionable dealing and usury. *Id.*

Where finance company bought second trust notes, which arose from corporation's fraudulent home improvement scheme, from broker, who was not an agent of company, paid value for notes, acted in good faith without notice of any defenses to notes and bought such notes only for a short period and stopped when it learned of corporation's undesirable practices, company was a "holder in due course" and thus was free of claims of fraud in the inducement, unconscionability and usury. *Id.*

Notice

Where knowledge which vice-chairman of board of bank had acquired of partnership difficulties and settlement between maker and payee of note, which was given as part of partnership settlement agreement and which payee endorsed to bank, was acquired in his individual capacity as a private accountant and not as an official or employee of the bank, such knowledge was not imputable to the bank for purpose of determining whether bank, which sought to recover on note, had received knowledge that note was conditional and subject to defenses, including defense of failure of consideration. *R. M. Millman v. State National Bank of Maryland et ano.* (D.C. App. 1974, 323 A.2d 723).

Reformation of instrument

Where homeowner's notes resulted from financing of fraudulent, unconscionable home improvement contracts, notes held by federal savings and loan associations, which were not holders in due course, would be cancelled and each homeowner would be treated as having made "new loan" which was for an amount equal to true value received and which was at interest rates and for period stated in his original loan. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

Unconscionable contract

Where contract price paid to corporation under home improvement contracts was usually at least double the cost and reasonable profit to contractor, such contracts were unconscionable for purposes of raising defense against holders of notes arising out of financing of such contracts. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

§ 28:3-303. Taking for value

NOTES TO DECISIONS

Collateral

Whether bank, seeking to recover on note, took note in payment of an outstanding loan or as collateral for issuance of the loan was immaterial to determination whether bank was holder in due course since a holder who takes a negotiable instrument as collateral for a loan takes for value and may thereby be a holder in due course. *R. M. Millman v. State National Bank of Maryland et ano.* (D.C. App. 1974, 323 A.2d 723).

§ 28:3-304. Notice to purchaser

NOTES TO DECISIONS

Alleged fraud

In view of the apparent inconsistency in district court findings and because record showed that defendant purchased note on recommendation of his accountant action to enjoin sale of plaintiff's home to satisfy lien of deed of trust was remanded to district court for development of additional information in determining whether defendant was a holder in due course with respect to whom claims of fraud in procurement of note and usury would not be valid defenses. *J. M. Warren v. A. Lopatin et al.* (1973, 475 F. 2d 1329, 155 U.S. App. D.C. 60).

§ 28:3-305. Rights of a holder in due course

NOTES TO DECISIONS

Evidence

Evidence, in action by homeowners for rescission and restitution of money paid on second trust notes arising out of corporation's fraudulent home improvement scheme, failed to establish that licensed broker, who bought second trust notes from corporation and who sold such notes to defendant finance company, was anything but an independent broker, and thus established, with regard to claims against company of Loan Shark Law violations and of illegal money lending, that company had made no loans. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

Evidence, in action by homeowners for rescission and restitution of money paid on notes arising under fraudulent home improvement scheme, failed to establish that sufficient opportunity was not given homeowners to know contents of documents which they signed and thus failed to establish fraud in the factum. *Id.*

Immunity from defenses

Since bank, to which payee endorsed and delivered note, was a holder in due course, the bank which sued maker and payee, took note free of maker's defenses asserted against the payee, including defense of want of consideration. *R. M. Millman v. State National Bank of Maryland et ano.* (D.C. App. 1974, 323 A.2d 723).

Holder in due course is immune from defenses to notes based on claims of fraud in the inducement, unconscionable dealing and usury. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

§ 28:3-306. Rights of one not holder in due course

NOTES TO DECISIONS

Reformation of instrument

Where homeowner's notes resulted from financing of fraudulent, unconscionable home improvement contracts, notes held by federal savings and loan associations, which were not holders in due course, would be cancelled and each homeowner would be treated as having made "new loan" which was for an amount equal to true value received and which was at interest rates and for period stated in his original loan. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

§ 28:3-307. Burden of establishing signatures, defenses and due course

NOTES TO DECISIONS

Alleged fraud

In view of the apparent inconsistency in district court findings and because record showed that defendant purchased note on recommendation of his accountant action to enjoin sale of plaintiff's home to satisfy lien of deed of trust was remanded to district court for development of additional information in determining whether defendant was a holder in due course with respect to whom claims of fraud in procurement of note and usury would not be valid defenses. *J. M. Warren v. A. Lopatin et al.* (1973, 475 F. 2d 1329, 155 U.S. App. D.C. 60).

Applicable law

Provisions of this section that when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense apply to suit on notes although the

transaction took place prior to the effective date of this section. *R. J. Toomey et ano. v. D. S. Cammack* (D.C. App. 1975, 345 A.2d 453).

Burden of proof

Burden of proof rests on person claiming to be immune from certain defenses to note on ground that he is a holder in due course even if entire transaction occurred prior to effective date of the UCC, and to sustain such burden he must demonstrate that he has taken the instrument for value, in good faith and without notice of any defense against it on the part of any person. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

Reformation of instrument

Where homeowner's notes resulted from financing of fraudulent, unconscionable home improvement contracts, notes held by federal savings and loan associations, which were not holders in due course, would be cancelled and each homeowner would be treated as having made "new loan" which was for an amount equal to true value received and which was at interest rates and for period stated in his original loan. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

PART 4.—LIABILITY OF PARTIES

§ 28:3-401. Signature

NOTES TO DECISIONS

Absence of signature

After foreclosure was had on first deed of trust and proceeds of sale left nothing for payment of second deed of trust, bona fide assignees of rights of bona fide assignee of rights under such second deed of trust which was evidenced by a note can sue purchasers directly on their contract to assume such second deed of trust, though note did not contain purchasers' signatures and thus they could not be held liable on such instrument itself. *City Mortgage Investment Club et ano. v. P. C. Beh et ano.* (D.C. App. 1975, 334 A.2d 183).

§ 28:3-417. Warranties on presentment and transfer

NOTES TO DECISIONS

Transfer "without recourse"

Although, with respect to unenforceability of note endorsed "without recourse" because of illegality of underlying loan, transferee had full knowledge of same facts as its transferor and made the same "mistake" of law, transferee did not subjectively know when it accepted the note that a good defense existed against it, and thus was entitled to coverage of warranty. *Hartford Life Insurance Co. v. Title Guarantee Co. et al.* (1975, 520 F.2d 1170, 172 U.S. App. D.C. 156).

Article 4.—BANK DEPOSITS AND COLLECTIONS

PART 2.—COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

§ 28:4-208. Security interest of collecting bank in items, accompanying documents and proceeds

NOTES TO DECISIONS

Holder in due course

Where wife had obtained a temporary restraining order on October 2, 1972, barring withdrawal of any of husband's retirement funds from husband's account at first bank before defendant second bank presented checks signed by husband to first bank, wife has a prior claim to funds in account of first bank insofar as temporary restraining order is a valid attachment of those funds, even though defendant bank cashed husband's checks on September 28, September 29, and October 2, 1972, without having notice of wife's claim to the funds. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

§ 28:4-209. When bank gives value for purposes of holder in due course

NOTES TO DECISIONS

Holder in due course

Where wife had obtained a temporary restraining order on October 2, 1972, barring withdrawal of any of husband's retirement funds from husband's account at first bank before defendant second bank presented checks signed by husband to first bank, wife has a prior claim to funds in account of first bank insofar as temporary restraining order is a valid attachment of those funds, even though defendant bank cashed husband's checks on September 28, September 29, and October 2, 1972, without having notice of wife's claim to the funds. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

PART 3.—COLLECTION OF ITEMS: PAYOR BANKS

§ 28:4-303. When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified

NOTES TO DECISIONS

Notice

Where wife had obtained a temporary restraining order on October 2, 1972, barring withdrawal of any of husband's retirement funds from husband's account at first bank before defendant second bank presented checks signed by husband to first bank, wife has a prior claim to funds in account of first bank insofar as temporary restraining order is a valid attachment of those funds, even though defendant bank cashed husband's checks on September 28, September 29, and October 2, 1972, without having notice of wife's claim to the funds. *L. O. Trigo v. The Riggs National Bank of Washington, D.C.* (D.C. App. 1975, 338 A.2d 445).

PART 4.—RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMERS

§ 28:4-406. Customer's duty to discover and report unauthorized signature or alteration

NOTES TO DECISIONS

General

Where Uniform Commercial Code did not apply to precise situation, i.e., where bank paid checks lacking one of two required signatures and made disbursements of loan advances contrary to loan agreement, general contract principles governed, and defenses of contributory negligence and proximate cause were not available. *G & R Corporation, et al. v. American Security & Trust Company* (1975, 523 F.2d 1164, 173 U.S. App. D.C. 215).

Notice

Purpose of provision of this section allowing maximum one-year limitation, regardless of negligence of bank's customer, for customer to assert claims against bank for payment of items bearing unauthorized signatures or material alterations is to compel customer to notify bank of wrongful payment of item within reasonable time, and customer's duty to discover and notify is limited to notice that item has been improperly paid; provision does not compel customer to declare at that time his intention to avail himself of legal remedies against the bank. *G & R Corporation, et al. v. American Security & Trust Company* (1975, 523 F.2d 1164, 173 U.S. App. D.C. 215).

Where bank not only authorized diversion of funds from joint venture account but also received the benefits thereof, bank would not be heard to complain that it lacked notice of such disbursement, and bank was not protected by this section providing maximum one-year limitation, regardless of negligence of bank or customer, for customer to assert claims against bank for disbursements made upon unauthorized signature or alteration. *Id.*

Unauthorized signature

Where drawing on joint venture account with bank required signature of one of two contractors and signature of one of two other joint venturers, and bank paid upon the signatures of the contractors alone, neither signature

was an "unauthorized signature" within meaning of this section providing that customer's negligence in examining bank statement and notifying bank may preclude him from recovering from bank for payment of items bearing unauthorized signatures or material alterations. *G & R Corporation, et al. v. American Security & Trust Company* (1975, 523 F. 2d 1164, 173 U.S. App. D.C. 215).

Article 9.—SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

PART 5.—DEFAULT

§ 28:9-501. Default; procedure when security agreement covers both real and personal property

NOTES TO DECISIONS

Replevin

Upon failure of conditional vendee to make payment, conditional vendor has right to replevy the goods and either keep them as his own or dispose of them by sale provided conditional vendor adheres to notice provisions of the Uniform Commercial Code. *J. R. Roebuck et ano. v. Walker-Thomas Furniture Co., Inc.* (D.C. App. 1973, 310 A. 2d 845).

Rights in collateral

Conditional vendee's ownership rights in collateral are not cut off as a result of failure to make payment and entry of default judgment, but rather such default merely satisfies a condition precedent to the conditional vendor's right to invoke certain remedies. *J. R. Roebuck et ano. v. Walker-Thomas Furniture Co., Inc.* (D.C. App. 1973, 310 A. 2d 845).

§ 28:9-504. Secured party's right to dispose of collateral after default; effect of disposition

NOTES TO DECISIONS

Construction

It is only where secured creditor ignores rights against the collateral and elects to proceed on the underlying debt that subsequent disposal of collateral is not governed by requirements of Uniform Commercial Code. *J. R. Roebuck et ano. v. Walker-Thomas Furniture Co., Inc.* (D.C. App. 1973, 310 A. 2d 845).

Notice

Upon failure of conditional vendee to make payment, conditional vendor has right to replevy the goods and either keep them as his own or dispose of them by sale provided conditional vendor adheres to notice provisions of the Uniform Commercial Code. *J. R. Roebuck et ano. v. Walker-Thomas Furniture Co., Inc.* (D.C. App. 1973, 310 A. 2d 845).

Chapter 23.—ASSIGNMENT OF CHOSSES IN ACTION

§ 28-2303. Assignment of nonnegotiable contract

NOTES TO DECISIONS

Intent

In enacting statutory provision allowing assignee to sue in his own name, Congress did not intend the statute to be utilized to evade the prohibition against the unauthorized practice of law by laymen, but rather only sought to allow suit on a debt, which is assigned for procedural convenience, to be brought in the name of the assignee. *J. H. Marshall & Associates, Inc. v. W. A. Burlinson* (D.C. App. 1973, 313 A. 2d 587).

Chapter 27.—BUSINESS HOLIDAYS AND COMPUTATION OF TIME

SUBCHAPTER I.—BUSINESS HOLIDAYS

§ 28-2701. Holidays designated—Time for performing acts extended

The following days in each year, namely, the first day of January, commonly called New Year's Day; the fifteenth day of January, commonly called Dr.

King's Birthday; the twenty-second day of February, known as Washington's Birthday; the Fourth of July; the thirtieth day of May, commonly called Decoration Day; the first Monday in September, known as Labor Day; the twenty-fifth day of December, commonly called Christmas Day; every Saturday, after twelve o'clock noon; any day appointed or recommended by the President of the United States as a day of public feasting or thanksgiving, and the day of the inauguration of the President, in every fourth year are holidays in the District for all purposes. When a day set apart as a legal holiday falls on Sunday the next succeeding day is a holiday. In such cases, and when a Sunday and a holiday fall on successive days, all commercial paper falling due on any of those days shall, for all purposes of presenting for payment or acceptance, be deemed to mature and be presentable for payment or acceptance on the next secular business day succeeding. Every Saturday is a holiday in the District for (1) every bank or banking institution having an office or banking house located within the District, (2) every Federal savings and loan association whose main office is in the District, and (3) every building association, building and loan association, or savings and loan association, incorporated or unincorporated, organized and operating under the laws of and having an office located within the District. An act which would otherwise be required, authorized, or permitted to be performed on Saturday in the District at the office or banking house of, or by, any such bank or bank institution, Federal savings and loan association, building association, building and loan association, or savings and loan association, if Saturday were not a holiday, shall or may be so performed on the next succeeding business day, and liability or loss of rights of any kind may not result from such delay. (Aug. 30, 1964, 78 Stat. 671, Pub. L. 88-509, § 1, eff. Jan. 1, 1965; Aug. 1, 1975, D.C. Law 1-11, § 103, 22 DCR 1804.)

SHORT TITLE

Section 101 of Act Aug. 1, 1975, D. C. Law 1-11, provided: "That this act [amending § 28-2701] may be cited as the 'King Birthday Act'."

FINDINGS AND PURPOSES

Section 101 of Act Aug. 1, 1975, D. C. Law 1-11, provided: "(a) The Council of the District of Columbia wishes to commemorate in an appropriate manner the birthday of Dr. Martin Luther King, Jr., to acknowledge an honor:

"(1) His leadership in the struggle for moral principles of government and humane treatment of persons in all nations of the world;

"(2) His leadership and lifetime dedication against discrimination, war and racism;

"(3) His leadership in the struggle for civil rights of all Americans, and in particular the quest for self-determination for the District of Columbia.

"(b) The Council of the District of Columbia further finds that there is now no holiday in the District of Columbia in commemoration of the contributions of any Black citizen."

AMENDMENT

1975—Act Aug. 1, 1975, D.C. Law 1-11, inserted "the fifteenth day of January, commonly called Dr. King's Birthday;" immediately after the first semicolon.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 104 of Act Aug. 1, 1975, D.C. Law 1-11, provided: "This act [amending § 28-2701] becomes effective on the 31st day after submission to the Speaker of the

House and President of the Senate provided that a resolution disapproving this act has not been adopted by the Congress (P.L. 93-198); 87 Stat. 714 [see § 1-147(c)]."

SUBCHAPTER II.—COMPUTATION OF TIME

§ 28-2711. Daylight-saving time

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 161.

Chapter 33.—INTEREST AND USURY

Sec.

28-3309. District of Columbia Council authorized to exempt certain loans, and to change rates of interest.

AMENDMENT

1973—Item 28-3309 was added to the chapter analysis by Act Dec. 29, 1973, Pub. L. 93-229, § 1(b).

§ 28-3301. Rate of interest expressed in contract

NOTES TO DECISIONS

Computation of interest

Act of bank in computing interest on personal, unsecured installment loans without regard to declining balance of principal was usurious under law of District of Columbia where amount of interest charged exceeded that which would be assessed by computing interest at maximum permissible rate with regard to unpaid balances of principal. *D. Cohen et al. v. District of Columbia National Bank et al.* (1974, 382 F. Supp. 270).

Neither fact that it had been past practice in District of Columbia to compute interest on installment loans without regard to declining balance of principal nor fact that there had been no direct congressional intervention to alter practice could serve as a justification for procedure when it resulted in usurious interest rates in excess of eight percent. *Id.*

Where loans, under which interest charges, if they were spread over life of loan and if fee at time of settlement were included, would not have been usurious but would have been usurious if fee were added to interest of the first year, were in accord with the law when such loans were made, loans were not usurious ab initio. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

A loan is usurious only if the total interest exacted exceeds that which would have been collected had the maximum lawful rate of interest been charged over the entire period of the loan. *Montgomery Federal Savings and Loan Association v. E. Baer et ano.* (D.C. App. 1973, 308 A. 2d 768).

Construction

In context of personal, unsecured installment loans, term "principal amount," within this section providing that parties to an instrument in writing for payment of money may contract for payment of interest on principal amount at any rate not exceeding eight percent per annum, refers to original principal amount of loan, rather than actual principal amount which remains under control of borrower, and operates to prohibit a bank from computing interest without regard to declining balance of loan if interest rates in excess of eight percent result therefrom. *D. Cohen et al. v. District of Columbia National Bank et al.* (1974, 382 F. Supp. 270).

Subsequent enactment of legislation more favorable to position of bank engaging in usurious practice of computing interest without regard to declining balance of principal did not have any retroactive effect; any favorable implication was effectively rebutted by plain wording of statute as to unpaid balances. *Id.*

Within meaning of this section providing that the parties to a written instrument for the payment of money at a future time may contract therein for the payment of interest on the principal at a rate not exceeding eight per-

cent per annum, the phrase "8 percent per annum" relates to the rate of interest and rate alone; it has no bearing on the time of payment, as to which the section is simply silent. *Montgomery Federal Savings and Loan Association v. E. Baer et ano.* (D.C. App. 1973, 308 A. 2d 768).

Revolving charge accounts

Financial institution which issued credit cards honored by independent merchants is entitled to same exemption from usury laws under the "time-price" doctrine as enjoyed by retailers who operated their own revolving charge account plans. *B. L. Kass et ano. v. Central Charge Service, Inc.* (D.C. App. 1973, 304 A. 2d 632).

Under usury statute existing prior to enactment of D.C. Consumer Credit Protection Act of 1971, a retail merchant could enforce a revolving charge account agreement with a customer, terms of which required payment of one and one-half percent per month on balances remaining unpaid after first billing cycle for goods purchased on credit. *B. L. Kass et ano. v. Garfinckel, Brooks Brothers, Miller & Rhoads, Inc.* (D.C. App. 1973, 299 A. 2d 542).

Time-price sale

The time-price doctrine, that is, that a bona fide sale of property on credit at a price which exceeds cash price by more than legal rate of interest does not constitute usury since the seller is privileged to fix one price for cash and another for credit, is broad enough to apply to conditional sales as well as revolving credit transactions. *B. L. Kass et ano. v. Garfinckel, Brooks Brothers, Miller & Rhoads, Inc.* (D.C. App. 1973, 299 A. 2d 542).

Usury

A loan is usurious under law of District of Columbia, when declining balance of principal is taken into account throughout term thereof, if total interest exacted exceeds that which would have been collected had the maximum lawful rate of interest been charged over entire period of loan. *D. Cohen et al. v. District of Columbia National Bank et al.* (1974, 382 F. Supp. 270).

Whether a loan is secured or unsecured, under prevailing District of Columbia case law, failure to take declining principal balance into account can taint a loan with usury, if it results in actual interest rates in excess of eight percent. *Id.*

Custom and practice of District of Columbia banking community of computing interest on installment loans without regard to declining balance of principal did not preclude determination that practice was usurious where it resulted in actual interest rates in excess of eight percent. *Id.*

A general exception to usury statute in District of Columbia exists, at least for a bank chartered under National Bank Act, in case of a discounted loan, but where discount feature is combined with an installment feature, fact that discount feature is present does not redeem loan from taint of usury insofar as installment feature is concerned. *Id.*

§ 28-3303. Usury defined

NOTES TO DECISIONS

Computation of interest

Where loans, under which interest charges, if they were spread over life of loan and if fee at time of settlement were included, would not have been usurious but would have been usurious if fee were added to interest of the first year, were in accord with the law when such loans were made, loans were not usurious ab initio. *C. L. Slaughter et al. v. Jefferson Federal Savings & Loan Association et al.* (1973, 361 F. Supp. 590).

A loan is usurious only if the total interest exacted exceeds that which would have been collected had the maximum lawful rate of interest been charged over the entire period of the loan. *Montgomery Federal Savings and Loan Association v. E. Baer et ano.* (D.C. App. 1973, 308 A. 2d 768).

Placement fees

Loan placement fee should relate to the whole loan for the entire period it is outstanding and is not attributable to interest in any single year; therefore, the payment of "points" by the borrower, although paid in full the first year, is in consideration of the lender making the full loan for the entire term and the borrower does not pay such a fee for the privilege of having the use of a money for

only one year. *Montgomery Federal Savings and Loan Association v. E. Baer et ano.* (D.C. App. 1973, 308 A. 2d 768).

Revolving charge accounts

Financial institution which issued credit cards honored by independent merchants is entitled to same exemption from usury laws under the "time-price" doctrine as enjoyed by retailers who operated their own revolving charge account plans. *B. L. Kass et ano. v. Central Charge Service, Inc.* (D.C. App. 1973, 304 A. 2d 632).

Under usury statute existing prior to enactment of D.C. Consumer Credit Protection Act of 1971, a retail merchant could enforce a revolving charge account agreement with a customer, terms of which required payment of one and one-half percent per month on balances remaining unpaid after first billing cycle for goods purchased on credit. *B. L. Kass et ano. v. Garfinkel, Brooks Brothers, Miller & Rhoads, Inc.* (D.C. App. 1973, 299 A. 2d 542).

Time-price sale

The time-price doctrine, that is, that a bona fide sale of property on credit at a price which exceeds cash price by more than legal rate of interest does not constitute usury since the seller is privileged to fix one price for cash and another for credit, is broad enough to apply to conditional sales as well as revolving credit transactions. *B. L. Kass et ano. v. Garfinkel, Brooks Brothers, Miller & Rhoads, Inc.* (D.C. App. 1973, 299 A. 2d 542).

§ 28-3309. District of Columbia Council authorized to exempt certain loans, and to change rates of interest

The District of Columbia Council is authorized from time to time to provide by regulation for (1) the exemption from the provisions of this chapter of any loan or financial transaction, and (2) the change of any interest rate specified in this chapter. The Council is further authorized to amend or repeal any such regulation at any time, but no such amendment or repeal relating to any exemption made under authority of this section shall affect any such loan or financial transaction lawfully made or entered into while such exemption is in effect. (Added Dec. 29, 1973, Pub. L. 93-229, § 1(a), 87 Stat. 945.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 161.

Chapter 35.—STATUTE OF FRAUDS

§ 28-3502. Special promise to answer for debt or default of another

NOTES TO DECISIONS

Authority to sign

Conclusion of trial court, based on resolution of conflicting testimony in action by purchaser for specific performance of contract to sell real estate owned by mother and daughter as joint tenants, that the mother who affixed

signatures of both to the contract did, because of prior transactions, have authority to affix the signature of her daughter to the contract is not erroneous. *M. A. Gustin v. R. D. Stegall et ano., Administrator, etc.* (D.C. App. 1975, 347 A. 2d 917; cert. denied 96 S. Ct. 2174, — U.S. —).

Memorandum

Itemized statement for services performed for municipality by landscape architect and city planner pursuant to oral contract with acting director of agency satisfied statute of frauds. *L. E. Coffin, Jr. v. District of Columbia* (D.C. App. 1974, 320 A. 2d 301).

Oral promise

Oral contract contemplating long-term employment is void under statute of frauds. *K. T. E. Gebhard et al. v. GAF Corporation* (1973, 59 F.R.D. 504).

Performance—Partial performance

Husband's authorizing filing of pretrial praecipe and withdrawing countersuit in divorce proceeding commenced by wife is sufficient to bring oral agreement, which had been negotiated with consent of husband and wife, and which provided that title to marital estate was to be given to husband in return for cash payment and withdrawal of countersuit, outside statute of frauds, and thus trial court, after verifying consent of wife, was in error in refusing to hold that parties were bound by such agreement. *C. J. Brown v. P. F. Brown* (D.C. App. 1975, 343 A.2d 59).

Although statute provides that any agreement involving an interest in real estate which purportedly is for a term in excess of one year must be in writing to be enforceable, the effectiveness of such legislation is not absolute and partial or complete performance under an oral contract may remove the case from the applicability of the statute. *Amberger & Wohlfarth, Inc. v. District of Columbia* (D.C. App. 1973, 300 A. 2d 460).

— Within one year

If contract contains alternative forms of performance it is enforceable so long as one alternative may be performed within a year. *H. S. Sperling v. A. J. Sullivan et al.* (1973, 361 F. Supp. 282).

Chapter 38.—CONSUMER PROTECTIONS

§ 28-3808. Assignees subject to defenses

NOTES TO DECISIONS

Construction

Provision of consumer protection law that act can only be asserted as a defense to or setoff against claim by the assignee is not applicable and did not limit scope of counterclaim where the statute was enacted after the commencement of that action. *J. H. Marshall & Associates, Inc. v. W. A. Burleson* (D.C. App. 1973, 313 A. 2d 587).

§ 28-3815. Administrative enforcement

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 161.

TITLE 29.—CORPORATIONS

Chapter 1.—GENERAL PROVISIONS

§ 29-102. Notice of application for, alteration to, or extension of charter or special privileges.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-105. Semiannual publication of financial statement required from foreign insurance companies, building associations, and banking companies, doing business in District—Exemption—Fraternal orders.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the Office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—BUSINESS CORPORATIONS (1901)

§ 29-211. Liability of stockholders.

NOTES TO DECISIONS

Piercing the corporate veil

Where corporation was formed with wife as sole stockholder to protect business of husband and wife from claims of husband's judgment creditors, wife extensively commingled corporate with personal funds and formalities of corporate form were in a large part disregarded, judgment creditor of corporation is entitled to have corporate veil pierced on basis that corporation had no independent existence but was used as personal instrumentality of husband and wife and creditor is entitled to recover amount of judgment from husband and wife. *R. Harris et ano. v. J. S. Wagshal* (D.C. App. 1975, 343 A.2d 283).

Chapter 4.—INSTITUTIONS OF LEARNING

§ 29-415. License to confer degrees—Issuance by Board of Higher Education—Evidence required.

CROSS REFERENCE

Abolishment of Board of Higher Education and transfer of functions (other than functions of licensing institutions to confer degrees), see § 31-1717.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-416, 29-417, 29-419, 31-1717.

Chapter 9.—BUSINESS CORPORATIONS (1954)

CHAPTER REFERRED TO IN U.S. CODE

This chapter is referred to in section 3932 of title 42, and sections 541, 545 of title 45, U.S. Code.

§ 29-902. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-904. General powers.

NOTES TO DECISIONS

Practice of law

Where collection agency practices terminated by Court of Appeals as being an unauthorized practice of law had been long carried on without judicial disapproval and where judgments had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. *Kelly Adjustment Co. v. R. Boyd et ano.* (D.C. App. 1975, 342 A.2d 361).

Collection agency did not become entitled to utilize practices which constituted the unauthorized practice of law merely because it received the grant by corporate charter from the District of Columbia to conduct its collection business and to do what is necessary to carry out its purposes. *J. H. Marshall & Associates, Inc. v. W. A. Bursleson* (D.C. App. 1973, 313 A. 2d 587).

§ 29-905. Defense of ultra vires.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-906a. Reserved name.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-907a. Change of registered office or registered agent.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-907b. Registered agent as an agent for service.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-908a. Issuance of shares of preferred or special classes in series.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-908i. Liability of subscribers and shareholders.

NOTES TO DECISIONS

Piercing the corporate veil

Where corporation was formed with wife as sole stockholder to protect business of husband and wife from claims of husband's judgment creditors, wife extensively commingled corporate with personal funds and formalities of corporate form were in a large part disregarded, judgment creditor of corporation is entitled to have corporate veil pierced on basis that corporation had no independent existence but was used as personal instrumentality of husband and wife and creditor is entitled to recover amount of judgment from husband and wife. *R. Harris et ano. v. J. S. Wagshal* (D.C. App. 1975, 343 A.2d 283).

§ 29-920. Books and records.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 544 of title 45, U.S. Code.

§ 29-921. Incorporators.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-921b. Filing of articles of incorporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-921g. Procedure to amend articles of incorporation before acceptance of subscriptions to shares.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-923a. Filing of articles of amendment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-924. Redemption and cancellation of shares.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-924b. Cancellation of reacquired shares.¹

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-925. Reduction of stated capital in certain cases.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-927d. Articles of merger or consolidation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-927e. Effective date of merger or consolidation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-927g. Merger or consolidation of domestic and foreign corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-927h. Merger of parent corporation and wholly owned subsidiary.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930. Voluntary dissolution of corporation by its incorporators.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

¹ Section probably should have been numbered as § 29-924a.

§ 29-930c. Filing of statement of intent to dissolve.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930d. Effect of statement of intent to dissolve.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930e. Proceedings after filing of statement of intent to dissolve.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930f. Revocation by consent of shareholders of voluntary dissolution proceedings.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930g. Revocation by act of corporation of voluntary dissolution proceedings.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930h. Filing of statement of revocation of voluntary dissolution proceedings.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930i. Effect of statement of revocation of voluntary dissolution proceedings.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930j. Articles of dissolution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-930k. Filing of articles of dissolution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-931. Involuntary dissolution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-931a. Venue and process.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-931b. Jurisdiction of court to liquidate assets and business of corporation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-931h. Filing of decree of dissolution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-931i. Survival of remedy after dissolution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Construction**

District of Columbia corporation, articles of incorporation of which had been revoked for failure to pay required annual report fee, and which did not wish to be reinstated because it was no longer in business, could properly maintain an action which was instituted prior to revocation without paying annual report fee. *M.A.S., Inc. v. Van Curler Broadcasting Corp. et al.* (1973, 357 F. Supp. 686).

§ 29-932. Annual report of domestic corporation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1967, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933. Admission of foreign corporation—Exemption from certificate requirement in certain cases—Service of process on exempt corporations—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Suit by foreign corporation

Foreign corporation which was engaged in sale of medical equipment in interstate commerce, which had no offices or warehouse facilities in District of Columbia, which solicited orders in District on one occasion through agent at national trade show, which pursued sales prospects gathered at trade show through personnel in California offices and which shipped equipment purchased directly to one buyer in District was not "transacting business" in District within meaning of statute requiring a foreign corporation transacting business in District to obtain certificate of authority prior to maintaining an action on any claim arising out of such business and thus was not required to secure such a certificate prior to maintaining action on contract for sale of equipment. *Hargrove Displays, Inc. v. Rohe Scientific Corporation et al.* (D.C. App. 1974, 316 A. 2d 330).

§ 29-933d. Application for certificate of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933e. Filing of documents on application for certificate of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933f. Effect of certificate of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Suit by foreign corporation

Foreign corporation which was engaged in sale of medical equipment in interstate commerce, which had no offices or warehouse facilities in District of Columbia, which solicited orders in District on one occasion through agent at national trade show, which pursued sales prospects gathered at trade show through personnel in California offices and which shipped equipment purchased directly to one buyer in District was not "transacting business" in District within meaning of statute requiring a foreign corporation transacting business in District to obtain certificate of authority prior to maintaining an

action on any claim arising out of such business and thus was not required to secure such a certificate prior to maintaining action on contract for sale of equipment. *Hargrove Displays, Inc. v. Rohe Scientific Corporation et al.* (D.C. App. 1974, 316 A. 2d 330).

§ 29-933h. Change of registered office or registered agent of foreign corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933i. Service of process on foreign corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Government contacts

New York corporation, involved in construction and operation of mills in foreign countries, was not within District of Columbia jurisdiction through government contacts which did not involve sales to the Government but merely taking advantage of services offered to prospective foreign investors by federal agencies, for purpose of action by plaintiffs in whose favor corporation negotiated federal loan. *Siam Kraft Paper Co., Ltd. v. Parsons & Whittemore, Inc., et al.* (1975, 400 F.Supp. 810).

§ 29-933j. Amendment to articles of incorporation of foreign corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933k. Merger of foreign corporation authorized to transact business in the District.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933l. Amended certificate of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-933m. Annual report of foreign corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-934. Withdrawal of foreign corporation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-934a. Filing of application for withdrawal.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-934b. Revocation of certificate of authority.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-934c. Issuance of certificate of revocation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-934d. Effect of revocation or withdrawal upon actions and contracts.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-934f. Transacting business without certificate of authority.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Status**

Under statute relating to foreign corporations qualifying to do business within District of Columbia, noncomplying foreign corporation exists within District subject only to disabilities and penalties set forth in statute. *A. Tasker, Inc. v. J. P. Amsellem* (D.C. App. 1974, 315 A. 2d 178).

Suit against individual officers

Fact that foreign corporation did not qualify to do business within District of Columbia did not entitle creditor of corporation to maintain suit against individual officers of corporation. *A. Tasker, Inc. v. J. P. Amsellem* (D.C. App. 1974, 315 A.2d 178).

§ 29-935. Commissioner—Duties and functions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-936. Fees and license taxes, and charges.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-938. Proclamation of revocation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Construction**

District of Columbia corporation, articles of incorporation of which had been revoked for failure to pay required annual report fee, and which did not wish to be reinstated because it was no longer in business, could properly maintain an action which was instituted prior to revocation without paying annual report fee. *M.A.S., Inc. v. Van Curler Broadcasting Corp. et al.* (1973, 357 F. Supp. 686).

§ 29-938b. Correction of error in proclamation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-938c. Reservation of name of proclaimed corporation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-938d. Reinstatement of proclaimed corporations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-941. Effect of nonpayment of fees.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Construction**

District of Columbia corporation, articles of incorporation of which had been revoked for failure to pay required annual report fee, and which did not wish to be reinstated because it was no longer in business, could properly

maintain an action which was instituted prior to revocation without paying annual report fee. *M.A.S., Inc. v. Van Curler Broadcasting Corp. et al.* (1973, 357 F. Supp. 686).

This section providing that no corporation required to pay a fee, charge or penalty shall maintain in District of Columbia any action until all such fees and penalties have been paid in full was not intended to apply to a corporation whose articles of incorporation have been revoked for failure to pay annual report fees. *Id.*

§ 29-947. Action without a meeting.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-948. Appeal from Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-949. Certificates and certified copies of certain documents to be received in evidence.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-950. Unauthorized assumption of corporate powers.

NOTES TO DECISIONS

Suit against individual officers

Fact that foreign corporation did not qualify to do business within District of Columbia did not entitle creditor of corporation to maintain suit against individual officers of corporation. *A. Tasker, Inc. v. J. P. Amsellem* (D.C. App. 1974, 315 A. 2d 178).

§ 29-951. Forms to be furnished by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-952. Reincorporation or incorporation of existing corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-952a. Effect of issuance of certificate of reincorporation or incorporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-953. Transfer of duties of Recorder of Deeds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-958. Civil actions and prosecutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-959. Verification no longer required.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—NONPROFIT CORPORATIONS

CHAPTER REFERRED TO IN U.S. CODE

This chapter is referred to in section 1701j-2 of title 12, section 1302 of title 29, section 2996e of title 42, section 711 of title 45, section 396 of title 47, U.S. Code.

§ 29-1002. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1005. General powers.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 2996e of title 42, U.S. Code.

§ 29-1006. Defense of ultra vires.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1008. Reserved name.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1010. Change of registered office or registered agent.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1011. Registered agent as an agent for service.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1018. Board of directors.**NOTES TO DECISIONS****Fiduciary duty**

A director or trustee of a charitable hospital organized under the Non-Profit Corporation Act of the District of Columbia is in default of his fiduciary duty to manage the fiscal and investment affairs of the hospital if it has been shown by a preponderance of the evidence (1) that while assigned to a particular committee of the board having general financial or investment responsibility under the bylaws of the corporation, he has failed to use due diligence in supervising the actions of those officers, employees or outside experts to whom the responsibility for making day-to-day financial or investment decision has been delegated; (2), that he knowingly permitted the hospital to enter into business transaction with himself or with any corporation, partnership or association in which he then had a substantial interest or held a position as trustee, director, general manager or principal officer, without having previously informed persons charged with approving that transaction of his interest or position and of any significant reasons, unknown to or not fully appreciated by such persons, why the transaction might not be in the best interest of the hospital; or (3) that he actively participated in or voted in favor of a decision by the board or any committee or subcommittee thereof to transact business with himself or with any corporation, partnership or association in which he then had a substantial interest or held a position as trustee, director, general manager or principal officer, or if he otherwise failed to perform his duties honestly, in good faith, and with a reasonable amount of diligence and care. *D. M. Stern et al. v. Lucy Webb Hayes National Training School for Deaconesses and Missionaries et al.* (1974, 381 F. Supp. 1003).

§ 29-1029. Incorporators.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1031. Filing of articles of incorporation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1037. Filing of articles of amendment.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1042. Articles of merger or consolidation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1043. Effective date of the merger or consolidation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1045. Merger or consolidation of domestic and foreign corporations.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1050. Revocation of voluntary dissolution proceedings.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1052. Filing of articles of dissolution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1053. Involuntary dissolution.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1054. Venue and process.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1082. Conducting affairs without certificate of authority.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1083. Annual report of domestic and foreign corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1084. Filing of annual report of domestic and foreign corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1086. Proclamation of revocation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1088. Correction of error in proclamation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1089. Reservation of name of proclaimed corporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1090. Reinstatement of proclaimed corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1091. Penalties imposed upon corporations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1092. Fees for filing documents and issuing certificates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1093. Commissioner: Duties and functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1094. Appeal from Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1095. Certificates and certified copies to be received in evidence.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1096. Forms to be furnished by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1099. Action by members or directors without a meeting.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1099d. Filing of statement of election to accept this chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1099f. Actions to be in name of District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1099j. Effect of false statement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—PROFESSIONAL CORPORATIONS

§ 29-1102. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 29-1106. Incorporation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 30.—DOMESTIC RELATIONS

Chapter 1.—MARRIAGE

§ 30-101. Prohibitions—Marriages void ab initio.

NOTES TO DECISIONS

Laches and estoppel

Where two couples obtained Mexican divorces which were invalid because none of four parties was domiciled in Mexico, two of them merely spent a few hours in that country in year when divorces were obtained and absent spouses merely executed powers of attorney but entered no appearance in Mexican court, husband, who later married the other's supposed ex-wife, was estopped from challenging Mexican decrees on jurisdictional grounds in suit to annul his second marriage. *A. S. Clagett v. J. D. B. King* (D.C. App. 1973, 308 A.2d 245).

§ 30-104. Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.

NOTES TO DECISIONS

Laches and estoppel

Where two couples obtained Mexican divorces which were invalid because none of four parties was domiciled in Mexico, two of them merely spent a few hours in that country in year when divorces were obtained and absent spouses merely executed powers of attorney but entered no appearance in Mexican court, husband, who later married the other's supposed ex-wife, was estopped from challenging Mexican decrees on jurisdictional grounds in suit to annul his second marriage. *A. S. Clagett v. J. D. B. King* (D.C. App. 1973, 308 A.2d 245).

§ 30-110. Duty of clerk before issuing license—Perjury.

NOTES TO DECISIONS

Constitutionality

Requirement of this section that marriage license applications record color of applicant is not required by a compelling government interest and does not have a rational basis, and thus is unconstitutional under equal protection clause. *A. B. Pedersen et al. v. J. M. Burton, Clerk* (1975, 400 F.Supp. 960).

§ 30-118. Marriage license applications as public records and open to inspection—Accessibility.

NOTES TO DECISIONS

Constitutionality

Requirement of this section that marriage license applications which record color of applicant be disclosed is not required by a compelling government interest and does not have a rational basis, and thus is unconstitutional under equal protection clause. *A. B. Pedersen et al. v. J. M. Burton, Clerk* (1975, 400 F.Supp. 960).

§ 30-119. Premarital examinations—Statements regarding blood test to be filed with license application.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—PROPERTY RIGHTS

§ 30-208. Power of married women separately to trade, to contract, and to sue and be sued—Husband not liable for wife's separate contract or tort.

NOTES TO DECISIONS

Interspousal immunity

Law of District of Columbia, which was place of parties' domicile and center of relationship, rather than law of New York, which was site of both injury and conduct which caused it, was applicable, where negligence was not in issue, and issue was one of capacity to sue. *L. T. Edmunds v. J. A. Edmunds et ano.* (1972, 353 F. Supp. 287).

Chapter 3.—UNIFORM SUPPORT

§ 30-304. Extent of duties of support.

NOTES TO DECISIONS

Due process

Application of this chapter did not deny mother from whom support was sought due process even if mother had not been given notice of initiating proceeding where mother was provided with notice of proceeding in responding court and was given opportunity to be heard at hearing which she attended with appointed counsel in responding court. *M. Watson v. M. Dreadin* (D.C. App. 1973, 309 A.2d 493; cert. denied 94 S. Ct. 1488, 415 U.S. 959).

Misconduct

Welfare of child should not be prejudiced by delictum of a parent, and mother's misconduct toward father, even if it consists of impeding his visitation rights, does not justify father's failure to support his child. *V. E. Norton v. J. Norton, Jr.* (D.C. App. 1972, 298 A.2d 514).

§ 30-309. Complaint on behalf of a minor—Who may bring.

NOTES TO DECISIONS

Custody

In a case under this chapter, question of whether maternal grandmother, who initiated petition in Florida, had valid custody of child was not for determination by courts of District of Columbia where mother from whom support was sought resided, where maternal grandmother had obtained legal custody under preliminary order of Florida court and the mother produced no further order to the contrary. *M. Watson v. M. Dreadin* (D.C. App. 1973, 309 A.2d 493; cert. denied 94 S. Ct. 1488, 415 U.S. 959).

Law governing

Law of initiating jurisdiction determines requisite status of petitioning party. *M. Watson v. M. Dreadin* (D.C. App. 1973, 309 A.2d 493; cert. denied 94 S. Ct. 1488, 415 U.S. 959).

Standing

In proceedings in responding court under this chapter, mother, from whom support for child was sought, could not challenge standing of maternal grandmother, who had been granted custody of child under preliminary order of initiating court, to initiate the support proceedings. *M. Watson v. M. Dreadin* (D.C. App. 1973, 309 A.2d 493; cert. denied 94 S. Ct. 1488, 415 U.S. 959).

§ 30-314. Duty of the court when the District of Columbia is responding State.

NOTES TO DECISIONS

Due process

Application of this chapter did not deny mother from whom support was sought due process even if mother had

not been given notice of initiating proceeding where mother was provided with notice of proceeding in responding court and was given opportunity to be heard at hearing which she attended with appointed counsel in responding court. *M. Watson v. M. Dreadin* (D.C. App. 1973, 309 A. 2d 493; cert. denied 94 S. Ct. 1488, 415 U.S. 959).

Duty of court

Although mother had removed herself and child from jurisdiction of court to California, trial court should have proceeded to determine child's support petition on its merits rather than dismissing rule to show cause, where there was no specific finding that mother was in contempt or had trifled with court, nor was child residing in a foreign country beyond reach of court, and reciprocal support enforcement statute, placing specific responsibility on courts of District of Columbia to hear and determine petition, obviated necessity of child and mother appearing

personally to pursue support action. *V. E. Norton v. J. Norton, Jr.* (D.C. App. 1972, 298 A. 2d 514).

§ 30-315. Order of support—Bond—Contempt.

NOTES TO DECISIONS

Evidence—Sufficiency

Evidence that mother had incurred over \$300 in telephone calls to maternal grandmother who had custody of child, that mother had offered to send airplane ticket to grandmother to be used to transport child from Florida to Washington, D.C., where mother resided and that mother was employable, at least to extent of earning money by caring for children of working mothers, sustained finding that mother was financially able to provide \$10 per week for support of child. *M. Watson v. M. Dreadin* (D.C. App. 1973, 309 A. 2d 493; cert. denied 94 S. Ct. 1488, 415 U.S. 959).

TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

Chap.	Sec.
17. Public Postsecondary Education Reorganization	31-1701
18. Interstate Agreement on Qualification of Educational Personnel.....	31-1801
19. Commission on the Arts and Humanities..	31-1901

Chapter 1.—BOARD OF EDUCATION

Sec.
31-104-1. Annual budget.
31-110. Repealed.
31-115. Repealed.
31-120. Repealed.

§ 31-101. Election and number of members—Term of office—Commencement of term—Compensation of members—Qualifications—Forfeiture of office for failure to maintain qualifications—Vacancies—President—Secretary—Meetings.

(a) The control of the public schools in the District of Columbia is vested in a Board of Education to consist of eleven elected members, three of whom are to be elected at large, and one to be elected from each of the eight school election wards established under chapter 11 of title 1. The election of the members of the Board of Education shall be conducted on a nonpartisan basis and in accordance with such chapter.

(b)(1) Except as provided in paragraph (3) of this subsection and section 1-1110(e), the term of office of a member of the Board of Education shall be four years.

* * * * *

(3) The term of office of a member of the Board of Education elected at a general election shall begin at noon on the fourth Monday in January next following such election. A member may serve more than one term. However, the term of office of a member of the Board of Education elected in the general election for member of the Board of Education to be held in 1973 and thereafter shall expire at noon of the thirtieth day after the Board of Elections certifies the results of the election, including any runoff election, for members of the Board of Education in the fourth year of such member's term. The term of a member of the Board of Education elected in the general election to be held in 1977 and thereafter shall begin immediately upon the expiration of the term preceding it.

* * * * *

(As amended Aug. 14, 1973, Pub. L. 93-92, § 2, 87 Stat. 313; Dec. 24, 1973, Pub. L. 93-198, title IV, § 495, 87 Stat. 811.)

CODIFICATION

Subsection (a) of this section is based on sec. 495 of the District of Columbia Self-Government and Governmental Reorganization Act (Pub. L. 93-198, approved Dec. 24, 1973). A prior subsection (a) was based on sec. 2 of Act June 20, 1906, as redesignated and amended; see 1973 main edition of the Code.

AMENDMENT

1973—Section 2 of Act Aug. 14, 1973, Pub. L. 93-92, amended section by (1) striking out "paragraph (2)" in subsec. (b)(1) and inserting "paragraph (3)" in lieu thereof, and (2) inserting in subsec. (b)(3) the second and third sentences as above set out.

EFFECTIVE DATE OF NEW SUBSEC. (a)

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that subsec. (a) of this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

EFFECTIVE DATE OF 1973 AMENDMENT BY PUB. L. 93-92

Section 3 of Act Aug. 14, 1973, Pub. L. 93-92, provided: "The amendments made by this Act [amending this section and §§ 1-1102, 1-1105, 1-1108, 1-1109, 1-1110, 1-1111] shall take effect on and after the date of enactment of this Act."

CONTINUATION OF BOARD OF EDUCATION

Section 719 of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 821, provided: "The term of any member elected to the District of Columbia Board of Education, and the powers and duties of the Board of Education, shall not be affected by the provisions of section 495 [§ 31-101(a)]. No provision of such section shall be construed to extend the term of any such member or to terminate the term of any such member."

CROSS REFERENCE

Compensation of members of Board of Education, applicability of provisions relating to Board of Trustees of University of District of Columbia, see § 31-1735.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1601, 31-1621, 31-1702.

NOTES TO DECISIONS

Meetings—Closed

The term "superintendent," as used in statutory scheme and contract, envisioned an employer-employee relationship between the Board of Education and the superintendent of schools; accordingly, while the meetings at which the Board developed and adopted standards by which it would evaluate the performance of the present superintendent were not held to terminate the superintendent's employment, the meetings' agenda were unquestionably "related matter" as contemplated by statute and are properly subject to closed sessions. *R. Goodwin et al. v. District of Columbia Board of Education et al.* (D.C. App. 1975, 343 A.2d 63).

Board of Education's adoption of evaluative standards by which to assess the performance of the present superintendent of schools is not a "final policy decision" within the meaning of this section providing, in part, that "no final policy decision on such other matters may be made by the Board of Education in a meeting (or part thereof) closed to the public." *Id.*

Given the express intent of Congress to allow certain meetings of the Board of Education to be closed and the embodiment of that intent in a specific statute (this section), that prior statute remains in effect as a qualification of section 1-1503a requiring meetings of the District government to be open to the public. *Id.*

§ 31-103. Determination of general policies—Expenditures of funds—Appointment of teachers and employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-104. Annual estimates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-104-1. Annual budget.

With respect to the annual budget for the Board of Education in the District of Columbia, the Mayor and the Council may establish the maximum amount of funds which will be allocated to the Board, but may not specify the purposes for which such funds may be expended or the amount of such funds which may be expended for the various programs under the jurisdiction of the Board of Education. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 452, 87 Stat. 803.)

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 31-104b. Coordination with the District of Columbia Government.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-105. Superintendent—Appointment—Term of office—Duties.

CROSS REFERENCES

Ceremonial expenses, see § 31-1121.

Official expenses, see § 31-1122.

NOTES TO DECISIONS

Employer-employee relationship with Board

The term "superintendent," as used in statutory scheme and contract, envisioned an employer-employee relationship between the Board of Education and the superintendent of schools; accordingly, while the meetings at which the Board developed and adopted standards by which it would evaluate the performance of the present superintendent were not held to terminate the superintendent's employment, the meetings' agenda were unquestionably "related matter" as contemplated by statute and are properly subject to closed sessions. *R. Goodwin et al. v. District of Columbia Board of Education et al.* (D.C. App. 1975, 343 A.2d 63).

§ 31-108. Removal of superintendent.

NOTES TO DECISIONS

Employer-employee relationship with Board

The term "superintendent," as used in statutory scheme and contract, envisioned an employer-employee relationship between the Board of Education and the superintendent of schools; accordingly, while the meetings at which the Board developed and adopted standards by which it would evaluate the performance of the present superintendent's employment, the meetings' agenda were unquestionably "related matter" as contemplated by statute and are properly subject to closed sessions. *R. Goodwin et al. v. District of Columbia Board of Education et al.* (D.C. App. 1975, 343 A.2d 63).

§ 31-110. Repealed. Oct. 30, 1975, D.C. Law 1-26, § 2(a) (1), 22 DCR 2467.

Section, act June 20, 1906, ch. 3446, § 3 (5th par.), 317, as amended Apr. 22, 1968, Pub. L. 90-292, § 3(d) 82 Stat. 102, related to the appointment and duties of a director of intermediate instruction for white schools.

§ 31-115. Repealed. Oct. 30, 1975, D.C. Law 1-26, § 2(a) (2), 22 DCR 2467.

Section, act June 20, 1906, ch. 3446, § 7 (3d par.), 34 Stat. 320, related to duties of principals of normal, high, and manual schools, subject to authority of superintendents of white and colored schools.

§ 31-118. Teachers' college—Expansion of normal schools.

CROSS REFERENCES

Ceremonial expenses, see § 31-1121.

Official expenses, see § 31-1122.

§ 31-120. Repealed. Sept. 23, 1975, D.C. Law 1-15, § 2, 22 DCR 1987.

Section, act July 2, 1940, ch. 523, 54 Stat. 729, authorized the accreditation of junior colleges operating within the District.

SAVINGS PROVISION

Section 2 of Act Sept. 23, 1975, D.C. Law 1-15, provided in part: "That any accreditation of a junior college heretofore conferred by the Board of Education and still in force shall be continued in force for five years from the date of enactment of this act, or until such junior college is otherwise accredited, whichever is earlier."

EFFECTIVE DATE OF REPEAL

Section 3 of Act Sept. 23, 1975, provided: "This act shall be effective at the end of the thirty day period provided

for Congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

§ 31-121. Education of pages—Board authorized to employ and compensate personnel.

The Board of Education of the District of Columbia is hereby authorized to employ such personnel for the education of pages as may be required and to pay compensation for such services in accordance with such rates of compensation as the Board of Education may prescribe. (July 25, 1975, Pub. L. 94-59, § 101, 89 Stat. 286.)

CODIFICATION

The provisions of this section were taken from the Legislative Branch Appropriations Act for 1976 and are contained in Pub. L. 94-59, 89 Stat. 286, under the heading, "Education of Pages", which provides for the education of Congressional and Supreme Court pages.

SIMILAR PROVISIONS

Provisions similar to those in this section are contained in the following legislative appropriation acts and in a number of earlier appropriation acts:

1975—Aug. 13, 1974, Pub. L. 93-371, § 101, 88 Stat. 436.
 1974—Nov. 1, 1973, Pub. L. 93-145, § 101, 87 Stat. 540.
 1973—July 10, 1972, Pub. L. 92-342, § 101, 86 Stat. 441.
 1972—July 9, 1971, Pub. L. 92-51, § 101, 85 Stat. 136.
 1971—Aug. 18, 1970, Pub. L. 91-382, § 101, 84 Stat. 817.
 1970—Dec. 12, 1969, Pub. L. 91-145, § 101, 83 Stat. 350.
 1969—July 23, 1968, Pub. L. 90-417, § 101, 82 Stat. 407.
 1968—July 28, 1967, Pub. L. 90-57, § 101, 81 Stat. 134.

Chapter 3.—TUITION OF NONRESIDENTS

§ 31-307. Payment of tuition by nonresidents—Board of Education to fix tuition—Deposit of payments—Exception.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-308. Board of Education to determine who is required to pay tuition—Penalties—Prosecutions to be conducted by Corporation Counsel.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-310. Authority not affected by reorganization plan—Delegation of functions—Section 31-301a to remain in full force and effect.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—VOCATIONAL REHABILITATION OF RESIDENTS OF THE DISTRICT OF COLUMBIA

Sec.

31-501 to 31-507. Repealed.

§§ 31-501 to 31-507. Repealed. July 6, 1943, 57 Stat. 379, ch. 190, § 2.

Sections, act Feb. 23, 1929, 45 Stat. 1260, ch. 303, §§ 1-7, provided for the vocational rehabilitation of disabled residents of the District of Columbia. Section 1 of act July 6, 1943 (Vocational Rehabilitation Act Amendments of 1943) extended the Vocational Rehabilitation Act (29 U.S.C. 31 et seq.) to cover the District of Columbia. The latter act was repealed and replaced by the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

Section 31-506 amended by act Apr. 17, 1937, 50 Stat. 69, ch. 110.

EFFECTIVE DATE OF REPEAL

Section 2 of act July 6, 1943, provided that: "Effective July 1, 1943, the Act entitled 'An Act to provide for the vocational rehabilitation of disabled residents of the District of Columbia, and for other purposes,' approved February 23, 1929, as amended [this chapter], is hereby repealed."

Chapter 7.—RETIREMENT OF PUBLIC SCHOOL TEACHERS

SUBCHAPTER I.—RETIREMENT BEFORE JUNE 30, 1946

§ 31-701. Deduction from pay to provide annuity—Basis of deductions—Certificate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-707. Longevity payable from District revenues—Calculation of annual appropriations—Certification to Budget Bureau—Reserves held by Treasurer of United States—Interest.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-715. Records to be kept by Commissioner of the District of Columbia—Annual report to Congress—Annual actuarial evaluation of fund.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-716. Annual estimates—No officer or employee receiving regular salary from Government shall receive additional compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-716a. Estimates of annual appropriations—Actuarial valuations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-717. Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946

§ 31-721. Deductions—Interest bearing accounts—Optional deposits—Refunds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-722. Retirement and annuity fund—Income from investments—Separate accounts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-725. Computation of annuity—Options.

* * * * *

(e) (1) Notwithstanding any other provision of this subchapter, other than this subsection, the monthly rate of annuity payable under this section shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act [42 U.S.C. 401 et seq.].

(2) Notwithstanding any other provisions of this subchapter, other than this subsection, the monthly rate of annuity payable under this section to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act [42 U.S.C. 401 et seq.], or three times such primary insurance amount divided by the num-

ber of surviving children entitled to an annuity, whichever is the lesser.

(3) The provisions of this subsection shall not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States, or the District of Columbia, an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.], a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act.

(4) An annuity payable from the teachers' retirement and annuity fund to a former teacher, which is based on a separation occurring prior to October 20, 1969, is increased by \$240.

(5) In lieu of any increase based on an increase under paragraph (4) of this subsection, an annuity payable from the teachers' retirement and annuity fund to the surviving spouse of a teacher or annuitant, which is based on a separation occurring prior to October 20, 1969, shall be increased by \$132.

(6) The monthly rate of an annuity resulting from an increase under paragraph (4) or (5) shall be considered as the monthly rate of annuity payable under subsection (a) for purposes of computing the minimum annuity under subsection (e). (As amended Sept. 3, 1974, Pub. L. 93-407, title III, § 301, 88 Stat. 1050.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Section 301 of Act Sept. 3, 1974, Pub. L. 93-407, added subsec. (e).

EFFECTIVE DATE OF 1974 AMENDMENT

Section 302 of Act Sept. 3, 1974, Pub. L. 93-407, title III, provided: "This title [amending § 31-725] shall become effective on the date of enactment. Annuity increases under this title shall apply to annuities which commence before, on, or after the date of enactment of this title, but no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after the date of enactment of this title, or the date on which the annuity commences, whichever is later."

§ 31-729. Deferred annuity—Refunds—Deposit of amount withdrawn—Annuity to survivors—Termination and restoration of annuity—Determination of dependency and disability.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-730. Beneficiaries—Order of precedence for payment of lump-sum benefits—Payment of lump-sum credit—Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-734. Records and accounts—Report to Congress—Appropriation estimates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-735. Transfer of appropriations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-736. Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-739a. Adjustment of annuities on basis of price index—Computation—Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-739c. Construction.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-740. Waiver of annuity—Revocation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-743. Effective dates of annuities provided by sections 31-741 and 31-742—Computation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-746. Tax-sheltered annuity program.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—USE OF SCHOOL BUILDINGS

§ 31-803. Inspector of buildings to control and supervise construction and repairs of school buildings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 9.—MEDICAL AND DENTAL COLLEGES

SUBCHAPTER I.—REGISTRATION

§ 31-901. Medical and dental colleges not incorporated by special act of Congress to register with Commissioner—Permit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-902. Application for registration and permit—Regulations—Inquiry as to equipment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-903. Penalty for failure to register and obtain permit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-904. Injunction proceedings—Duty of Commissioner—Jurisdiction of court.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—FINANCIAL ASSISTANCE

§ 31-922. Authorization of grants to Commissioner—Limitations—Appropriations authorized.

(b) For the purposes of this section and section 31-926, in determining eligibility for, and the amount of, grants with respect to private nonprofit medical and dental schools, consideration shall be given to any grants made to such schools pursuant to the portion of the program under section 773 of the Public Health Service Act [42 U.S.C. 295f-3] relating to financial assistance to schools which are in serious financial straits to aid them in meeting their costs of operation.

(c) There are authorized to be appropriated such sums as may be necessary for the fiscal years ending June 30, 1975, and June 30, 1976, to make grants under this section. (As amended Aug. 24, 1974, Pub. L. 93-389, 88 Stat. 763.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Act Aug. 24, 1974, Pub. L. 93-389, amended subsec. (b) by substituting "section 773 of the Public Health Service Act" for "section 772 of the Public Health Service Act (42 U.S.C. 295f-2)"; and amended subsec. (c) to extend the appropriation authorization through the fiscal year ending June 30, 1976.

§ 31-923. Application for grants—Time for filing—Contents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-926. Commissioner to make payments to medical and dental schools—Limitations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-927. Application for payments—Time for filing—Contents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-928. Method of making payments under § 31-926.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—MISCELLANEOUS

Sec.

31-1102. Repealed.

31-1103. Repealed.

31-1109. Board of Education may accept and apply donations for public schools—Accounting.

31-1110. Repealed.

31-1111. Repealed.

31-1112. Repealed.

31-1113. Repealed.

31-1119. Driver education program.

31-1120. Subsistence and transportation of handicapped children.

31-1121. Ceremonial expenses.

31-1122. Official expenses.

§ 31-1102. Repealed. July 8, 1974, Pub. L. 93-334, 88 Stat. 290.

Section, R.S., D.C., § 274, required compulsory vaccination against smallpox for public school students.

§ 31-1103. Repealed. Sept. 23, 1975, D.C. Law 1-14, § 2, 22 DCR 1983.

Section, based on ninth par. under subheading "Miscellaneous" of heading relating to "Public Schools" of sec. 1 of Act Mar. 2, 1907, ch. 2510, 34 Stat. 1141, related to compulsory service of male pupils in the high school cadets.

SHORT TITLE

The first section of Act Sept. 23, 1975, D.C. Law 1-14, provided: "That this Act [repealing § 31-1103] may be cited as the 'Cadet Corps Termination Act'."

EFFECTIVE DATE OF REPEAL

Section 3 of Act Sept. 23, 1975, D.C. Law 1-14, provided: "This act shall be effective at the end of the thirty day period provided for Congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

§ 31-1109. Board of Education may accept and apply donations for public schools—Accounting.

The Board of Education is authorized to receive any donations or contributions that may be made for the benefit of the public schools of the District of Columbia, and to apply the same in such manner as in their opinion shall be best calculated to effect the object of the donors; the board of education to account for all funds so received. (R. S. D. C., § 283; June 20, 1906, 34 Stat. 316, ch. 3446, § 2; Oct. 30, 1975, D.C. Law 1-26, § 3, 22 DCR 2467.)

AMENDMENT

1975—Act Oct. 30, 1975, D.C. Law 1-26, struck out "schools for colored children by persons disposed to aid in the elevation of the colored population in the District" and inserted in lieu thereof "public schools of the District of Columbia".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4 of Act Oct. 30, 1975, D.C. Law 1-26, provided that "This act [amending § 31-1109 and repealing §§ 31-110, 31-115, 31-1110 to 31-1113] shall be effective at the end of the thirty-day period provided for Congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SHORT TITLE

The first section of act Oct. 30, 1975, D.C. Law 1-26, provided "That this act [amending § 31-1109 and repealing §§ 31-110, 31-115, 31-1110 to 31-1113] may be cited as the 'Ethnic Reference Repeal Act'."

§ 31-1110. Repealed. Oct. 30, 1975, D.C. Law 1-26, § 2(b) (1), 22 DCR 2467.

Section, R.S.D.C. § 281, related to the education of colored children.

§ 31-1111. Repealed. Oct. 30, 1975, D.C. Law 1-26, § 2(b) (2), 22 DCR 2467.

Section, R.S.D.C. § 282, provided for the placement of children in white and colored schools.

§ 31-1112. Repealed. Oct. 30, 1975, D.C. Law 1-26, § 2(b) (3), 22 DCR 2467.

Section, R.S.D.C. § 306, provided that proportionate amount of school moneys be set apart for colored schools.

§ 31-1113. Repealed. Oct. 30, 1975, D.C. Law 1-26, § 2(b) (4), 22 DCR 2467.

Section, R.S.D.C. § 310, required that facilities be provided for educating colored children.

§ 31-1115. Bond not required for supplies issued by Department of the Army.

A bond shall not be required on account of military supplies or equipment issued by the Department of the Army for military instruction and practice by the students of high schools in the District of Columbia. (July 1, 1943, ch. 184, § 1, 57 Stat. 324.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011-3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

PRIOR PROVISIONS

Similar provisions were contained in the following prior District of Columbia appropriation acts:

- 1943—June 27, 1942, 56 Stat. 433, ch. 452, § 1.
- 1942—July 1, 1941, 55 Stat. 510, ch. 271, § 1.
- 1941—June 12, 1940, 54 Stat. 317, ch. 333, § 1.
- 1940—July 15, 1939, 53 Stat. 1015, ch. 281, § 1.
- 1939—Apr. 4, 1938, 52 Stat. 168, ch. 62, § 1.
- 1938—June 29, 1937, 50 Stat. 369, ch. 403, § 1.
- 1937—June 23, 1936, 49 Stat. 1869, ch. 726, § 1.
- 1936—June 14, 1935, 49 Stat. 355, ch. 241, § 1.
- 1935—June 4, 1934, 48 Stat. 859, ch. 389, § 1.
- 1934—June 16, 1933, 48 Stat. 235, ch. 93, § 1.
- 1933—June 29, 1932, 47 Stat. 360, ch. 308, § 1.
- 1932—Feb. 23, 1931, 46 Stat. 1393, ch. 282, § 1.
- 1931—July 3, 1930, 46 Stat. 968, ch. 848, § 1.
- 1930—Feb. 25, 1929, 45 Stat. 1278, ch. 314, § 1.
- 1929—May 21, 1928, 45 Stat. 662, ch. 659, § 1.
- 1928—Mar. 2, 1927, ch. 271, § 1, 44 Stat. 1314.
- 1927—May 10, 1926, ch. 276, § 1, 44 Stat. 432.
- 1926—Mar. 3, 1925, ch. 477, § 1, 43 Stat. 1232.
- 1925—June 7, 1924, ch. 302, § 1, 43 Stat. 557.

§ 31-1118. Use of appropriated funds for transportation of students, to change racial balance in schools—Education of individuals in elementary or secondary schools outside the District—Exceptions.

NOTES TO DECISIONS

Constitutionality

Fact that provision forbidding use of funds appropriated for District of Columbia to educate any individual in an

elementary or secondary school outside the District was inserted within five days after plan inviting enrollment of District children in Maryland schools was approved by respective school boards and publicly announced and that the section appeared in context of an "anti-busing" provision and that report accompanying section to legislative floor made it plain that section was aimed at eliminating plan, did not provide basis for invalidating statute, otherwise valid on its face, on ground that purpose was to impede racial segregation. *J. Bulluck et al. v. W. Washington, Commissioner etc., et al.* (1972, 468 F. 2d 1096, 152 U.S. App. D.C. 39).

Discrimination

Fact that Congress authorizes the District of Columbia to educate some handicapped and foster children outside the District does not require that Congress authorize a program of general or limited racial integration between schools of the District and schools of adjacent states. *J. Bulluck et al. v. W. Washington, Commissioner etc., et al.* (1972, 468 F. 2d 1096, 152 U.S. App. D.C. 39).

Equal protection

This section providing that, except in case of foster children already outside the District of Columbia and those handicapped children for whom educational facilities do not exist in public school systems of the District, no funds appropriated for the District may be used for cost of education, including cost of transportation, of any individual in an elementary or secondary school located outside the District does not deny equal protection to Black pupils seeking racial integration between schools of the District and schools of adjacent states; statutory classification is reasonable since Congress could rationally decide that special situation in which the two excepted classes found themselves warranted expenditure of funds necessary to provide for their education. *J. Bulluck et al. v. W. Washington, Commissioner etc., et al.* (1972, 468 F. 2d 1096, 152 U.S. App. D.C. 39).

Mootness

Suit seeking declaration of unconstitutionality of statute barring use of funds appropriated for District of Columbia to educate any individual in an elementary or secondary school located outside the district was not rendered moot by District school board's termination of program to educate elementary students in Maryland shortly after opening of present school year, while appeal from dismissal of complaint was sub judice; since statute still existed and proponents of plan continued to advocate its reinstatement, court had a concrete factual situation in which proponents had a continuing interest and court was not required to await direct violation of statute before passing on its validity. *J. Bulluck et al. v. W. Washington, Commissioner etc., et al.* (1972, 468 F. 2d 1096, 152 U.S. App. D.C. 39).

§ 31-1119. Driver education program.

The Board of Education is authorized, within the limits of appropriations therefor, to accept, on a loan basis, and to maintain and provide for insurance of motor vehicles, for use in the driver education programs of the public schools. (Oct. 26, 1973, Pub. L. 93-140, § 20, 87 Stat. 508.)

APPROPRIATIONS

See note under § 1-226a.

CROSS REFERENCE

Operators permits, see § 40-301.

§ 31-1120. Subsistence and transportation of handicapped children.

The Board of Education is authorized to provide for the furnishing of subsistence supplies and transportation for severely handicapped children attending special education schools or classes established

for their benefit in the public school system of the District of Columbia. (Oct. 26, 1973, Pub. L. 93-140, § 21, 87 Stat. 508.)

APPROPRIATIONS

See note under § 1-226a.

§ 31-1121. Ceremonial expenses.

The President of the Federal City College, the President of the Washington Technical Institute, the President of the District of Columbia Teachers College, and the Superintendent of Schools are hereby authorized to utilize moneys appropriated for the purposes of this section for such expenses as they may respectively deem necessary to conduct such official ceremonial, and graduation activities as are normally associated with the programs of educational institutions. (Oct. 26, 1973, Pub. L. 93-140, § 24, 87 Stat. 508.)

APPROPRIATIONS

See note under § 1-226a.

§ 31-1122. Official expenses.

The Superintendent of Schools, the President of the Federal City College, the President of the Washington Technical Institute, and the President of the District of Columbia Teachers College are hereby authorized to provide for the expenditure, within the limits of specified annual appropriations, of funds for appropriate purposes related to their official capacity as they may respectively deem necessary. Their determination thereof shall be final and conclusive, and their certificate shall be sufficient voucher for the expenditure of appropriations made pursuant to this section. (Oct. 26, 1973, Pub. L. 93-140, § 26, 87 Stat. 509.)

CODIFICATION

The portion of the source statute (sec. 26 of act Oct. 26, 1973) that relates to the Mayor of the District of Columbia and the Chairman of the Council of the District of Columbia is classified to § 1-262a.

APPROPRIATIONS

See note under § 1-226a.

Chapter 13.—EDUCATIONAL AGENCY FOR SURPLUS PROPERTY

§ 31-1301. Educational Agency for Surplus Property established—Functions and duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1302. Working capital fund provided—Rules and regulations of Agency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1303. Termination of Agency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 14.—PUBLIC SCHOOL FOOD SERVICES

§ 31-1402. Powers of the Board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1404. Food services fund—Appropriation authorized—Revenues and receipts—To be permanent revolving fund—Expenditures.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1408. Audits of accounts—Reports to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—SALARIES OF TEACHERS, SCHOOL OFFICERS AND OTHER EMPLOYEES

SUBCHAPTER I.—SALARY SCHEDULE

Sec.

31-1501a. Annual comparability study of teachers salaries—Recommendations.

SUBCHAPTER II.—CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

Sec.

31-1513. Teaching certificates—Renewals—Rules and Regulations.

SUBCHAPTER V.—ACCOMPANYING LEGISLATION

31-1542a. Summer school salaries—Appropriation Chargeable.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47-504.

SUBCHAPTER I.—SALARY SCHEDULE

§ 31-1501. Salaries of teachers, school officers and other employees—Service steps.

The following is the salary schedule for teachers, school officers, and certain other employees of the Board of Education whose positions are covered under this chapter:

TEACHERS AND SCHOOL OFFICERS SALARY SCHEDULE

[To be effective on the first day of the first pay period beginning on or after September 1, 1974, *Provided, however*, That salary paid to class 1A shall not exceed the amount payable to level III of the Executive Schedule and that the salary paid to any other class shall not exceed the amount payable to level V of the Executive Schedule]

Salary class and group	Service step—													Longevity step Y
	1	2	3	4	5	6	7	8	9	10	11	12	13	
Class 1A.....	\$45,500													
Class 1B.....	40,000													
Class 2A.....	38,000													
Class 2B.....	36,000													
Class 3.....	27,390	\$28,040	\$28,690	\$29,340	\$29,990	\$30,640	\$31,290	\$31,940	\$32,590					
Class 4.....	24,050	24,620	25,190	25,760	26,330	26,900	27,470	28,040	28,620					
Class 5:														
Group B, master's degree.....	22,750	23,290	23,830	24,370	24,910	25,450	25,990	26,530	27,070					
Group C, master's degree +30.....	23,235	23,775	24,315	24,855	25,395	25,935	26,475	27,015	27,555					
Group D, doctor's.....	23,715	24,255	24,795	25,335	25,875	26,415	26,955	27,495	28,035					
Class 6:														
Group B, master's degree.....	21,740	22,255	22,770	23,285	23,800	24,315	24,830	25,345	25,860					
Level IV principal.....	21,740	22,255	22,770	23,285	23,800	24,315	24,830	25,345	25,860					
Level III principal.....	21,100	21,615	22,130	22,645	23,160	23,675	24,190	24,705	25,220					
Level II principal.....	20,465	20,980	21,495	22,010	22,525	23,040	23,555	24,070	24,585					
Level I principal.....	19,830	20,345	20,860	21,375	21,890	22,405	22,920	23,435	23,950					
Group C, master's degree +30.....	22,160	22,675	23,190	23,705	24,220	24,735	25,250	25,765	26,280					
Level IV principal.....	22,160	22,675	23,190	23,705	24,220	24,735	25,250	25,765	26,280					
Level III principal.....	21,520	22,035	22,550	23,065	23,580	24,095	24,610	25,125	25,640					
Level II principal.....	20,885	21,400	21,915	22,430	22,945	23,460	23,975	24,490	25,005					
Level I principal.....	20,250	20,765	21,280	21,795	22,310	22,825	23,340	23,855	24,370					
Group D, doctor's degree.....	22,575	23,090	23,605	24,120	24,635	25,150	25,665	26,180	26,695					
Level IV principal.....	22,575	23,090	23,605	24,120	24,635	25,150	25,665	26,180	26,695					
Level III principal.....	21,935	22,450	22,965	23,480	23,995	24,510	25,025	25,540	26,055					
Level II principal.....	21,300	21,815	22,330	22,845	23,360	23,875	24,390	24,905	25,420					
Level I principal.....	20,665	21,180	21,695	22,210	22,725	23,240	23,755	24,270	24,785					
Class 7:														
Group B, master's degree.....	20,000	20,475	20,950	21,425	21,900	22,375	22,850	23,325	23,800					
Group C, master's degree +30.....	20,485	20,960	21,435	21,910	22,385	22,860	23,335	23,810	24,285					
Group D, doctor's.....	20,965	21,440	21,915	22,390	22,865	23,340	23,815	24,290	24,765					
Class 8:														
Group B-MA.....	18,395	18,855	19,315	19,775	20,235	20,695	21,155	21,615	22,075					
Group C-MA +30.....	18,880	19,340	19,800	20,260	20,720	21,180	21,640	22,100	22,560					
Group D-Doctor's.....	19,360	19,820	20,280	20,740	21,200	21,660	22,120	22,580	23,040					
Class 9:														
Group B, master's degree.....	17,960	18,410	18,860	19,310	19,760	20,210	20,660	21,110	21,560					
Group C, master's degree +30.....	18,445	18,895	19,345	19,795	20,245	20,695	21,145	21,595	22,045					
Group D, doctor's.....	18,925	19,375	19,825	20,275	20,725	21,175	21,625	22,075	22,525					
Class 10:														
Group B, master's degree.....	17,385	17,820	18,255	18,690	19,125	19,560	19,995	20,430	20,865					
Group C, master's degree +30.....	17,870	18,305	18,740	19,175	19,610	20,045	20,480	20,915	21,350					
Group D, doctor's.....	18,350	18,785	19,220	19,655	20,090	20,525	20,960	21,395	21,830					
Class 11:														
Group B, master's degree.....	16,815	17,235	17,655	18,075	18,495	18,915	19,335	19,755	20,175					
Group C, master's degree +30.....	17,300	17,720	18,140	18,560	18,980	19,400	19,820	20,240	20,660					
Group D, doctor's.....	17,780	18,200	18,620	19,040	19,460	19,880	20,300	20,720	21,140					
Class 12:														
Group B, master's degree.....	16,240	16,645	17,050	17,455	17,860	18,265	18,670	19,075	19,480					
Group C, master's degree +30.....	16,720	17,125	17,530	17,935	18,340	18,745	19,150	19,555	19,960					
Group D, doctor's.....	17,205	17,610	18,015	18,420	18,825	19,230	19,635	20,040	20,445					
Class 13:														
Group B, master's degree.....	14,920	15,405	15,890	16,375	16,860	17,345	17,830	18,315	18,800					
Group C, master's degree +30.....	15,405	15,890	16,375	16,860	17,345	17,830	18,315	18,800	19,285					
Group D, doctor's.....	15,885	16,370	16,855	17,340	17,825	18,310	18,795	19,280	19,765					
Class 14:														
Group A, bachelor's degree.....	11,415	11,920	12,425	12,930	13,435	13,940	14,445	14,950	15,455	\$15,960	\$16,465	\$16,970	\$17,475	
Group B, master's degree.....	12,375	12,880	13,385	13,890	14,395	14,900	15,405	15,910	16,415	16,920	17,425	17,930	18,435	
Group C, master's degree +30.....	12,865	13,370	13,875	14,380	14,885	15,390	15,895	16,400	16,905	17,410	17,915	18,420	18,925	
Group D, doctor's.....	13,345	13,850	14,355	14,860	15,365	15,870	16,375	16,880	17,385	17,890	18,395	18,900	19,405	
Class 15:														
Group A, bachelor's degree.....	9,550	10,035	10,420	10,810	11,195	11,580	12,065	12,550	13,035	13,520	14,005	14,490	14,975	\$16,130
Group A-1, bachelor's degree +15.....	10,130	10,515	10,900	11,290	11,675	12,060	12,550	13,035	13,520	14,005	14,490	14,975	15,460	17,095
Group B, bachelor's degree + 30 or master's degree.....	10,615	11,100	11,585	12,070	12,555	13,040	13,640	14,240	14,845	15,445	16,045	16,645	17,245	18,825
Group C, master's degree +30.....	11,100	11,585	12,070	12,555	13,040	13,525	14,125	14,730	15,330	15,930	16,530	17,130	17,730	19,320
Group D, master's degree +60 or doctor's.....	11,585	12,070	12,555	13,040	13,525	14,010	14,615	15,215	15,815	16,415	17,015	17,615	18,215	19,950

TEACHERS AND SCHOOL OFFICERS SALARY SCHEDULE

[To be effective on the first day of the first pay period beginning on or after January 1, 1975, except that salary paid to class 1A shall not exceed the amount payable to level III of the Executive Schedule and that the salary paid to any other class shall not exceed the amount payable to level V of the Executive Schedule]

Salary class and group	Service step—								
	1	2	3	4	5	6	7	8	9
Class 1A.....	\$46,865	-----	-----	-----	-----	-----	-----	-----	-----
Class 1B.....	41,200	-----	-----	-----	-----	-----	-----	-----	-----
Class 2A.....	39,140	-----	-----	-----	-----	-----	-----	-----	-----
Class 2B.....	37,080	-----	-----	-----	-----	-----	-----	-----	-----
Class 3.....	28,210	\$28,880	\$29,550	\$30,220	\$30,890	\$31,560	\$32,230	\$32,900	\$33,570
Class 4.....	24,770	25,355	25,940	26,525	27,110	27,695	28,280	28,865	29,450
Class 5:									
Group B—MA.....	23,435	23,990	24,545	25,100	25,655	26,210	26,765	27,320	27,875
Group C—MA+30.....	23,935	24,490	25,045	25,600	26,155	26,710	27,265	27,820	28,375
Group D—Doctors.....	24,420	24,975	25,530	26,085	26,640	27,195	27,750	28,305	28,860
Class 6:									
Group B—MA.....	22,390	22,920	23,450	23,980	24,510	25,040	25,570	26,100	26,630
Level IV—Principal.....	22,390	22,920	23,450	23,980	24,510	25,040	25,570	26,100	26,630
Level III—Principal.....	21,730	22,260	22,790	23,320	23,850	24,380	24,910	25,440	25,970
Level II—Principal.....	21,075	21,605	22,135	22,665	23,195	23,725	24,255	24,785	25,315
Level I—Principal.....	20,420	20,950	21,480	22,010	22,540	23,070	23,600	24,130	24,660
Group C—MA+30.....	22,890	23,420	23,950	24,480	25,010	25,540	26,070	26,600	27,130
Level IV—Principal.....	22,890	23,420	23,950	24,480	25,010	25,540	26,070	26,600	27,130
Level III—Principal.....	22,230	22,760	23,290	23,820	24,350	24,880	25,410	25,940	26,470
Level II—Principal.....	21,575	22,105	22,635	23,165	23,695	24,225	24,755	25,285	25,815
Level I—Principal.....	20,720	21,250	21,780	22,310	22,840	23,370	23,900	24,430	24,960
Group D—Doctors.....	23,375	23,965	24,435	24,965	25,495	26,025	26,555	27,085	27,615
Level IV—Principal.....	23,375	23,965	24,435	24,965	25,495	26,025	26,555	27,085	27,615
Level III—Principal.....	22,715	23,245	23,775	24,305	24,835	25,365	25,895	26,425	26,955
Level II—Principal.....	22,060	22,590	23,120	23,650	24,180	24,710	25,240	25,770	26,300
Level I—Principal.....	21,405	21,935	22,465	22,995	23,525	24,055	24,585	25,115	25,645
Class 7:									
Group B—MA.....	20,600	21,090	21,580	22,070	22,560	23,050	23,540	24,030	24,520
Group C—MA+30.....	21,100	21,590	22,080	22,570	23,060	23,550	24,040	24,530	25,020
Group D—Doctors.....	21,585	22,075	22,565	23,055	23,545	24,035	24,525	25,015	25,505
Class 8:									
Group B—MA.....	19,130	19,605	20,080	20,555	21,030	21,505	21,980	22,455	22,930
Group C—MA+30.....	19,630	20,105	20,580	21,055	21,530	22,005	22,480	22,955	23,430
Group D—Doctors.....	20,115	20,590	21,065	21,540	22,015	22,490	22,965	23,440	23,915
Class 9:									
Group B—MA.....	18,500	18,985	19,470	19,955	20,440	20,925	21,410	21,895	22,380
Group C—MA+30.....	19,000	19,465	19,930	20,395	20,860	21,325	21,790	22,255	22,720
Group D—Doctors.....	19,485	19,950	20,415	20,880	21,345	21,810	22,275	22,740	23,205
Class 10:									
Group B—MA.....	17,905	18,355	18,805	19,255	19,705	20,155	20,605	21,055	21,505
Group C—MA+30.....	18,405	18,855	19,305	19,755	20,205	20,655	21,105	21,555	22,005
Group D—Doctors.....	18,890	19,340	19,790	20,240	20,690	21,140	21,590	22,040	22,490
Class 11:									
Group B—MA.....	17,320	17,755	18,190	18,625	19,060	19,495	19,930	20,365	20,800
Group C—MA+30.....	17,820	18,255	18,690	19,125	19,560	19,995	20,430	20,865	21,300
Group D—Doctors.....	18,305	18,740	19,175	19,610	20,045	20,480	20,915	21,350	21,785
Class 12:									
Group B—MA.....	16,725	17,140	17,555	17,970	18,385	18,800	19,215	19,630	20,045
Group C—MA+30.....	17,225	17,640	18,055	18,470	18,885	19,300	19,715	20,130	20,545
Group D—Doctors.....	17,710	18,125	18,540	18,955	19,370	19,785	20,200	20,615	21,030
Class 13:									
Group B—MA.....	15,370	15,870	16,370	16,870	17,370	17,870	18,370	18,870	19,370
Group C—MA+30.....	15,870	16,370	16,870	17,370	17,870	18,370	18,870	19,370	19,870
Group D—Doctors.....	16,355	16,855	17,355	17,855	18,355	18,855	19,355	19,855	20,355

Salary class and group	Service step—													Longevity step Y
	1	2	3	4	5	6	7	8	9	10	11	12	13	
Class 14:														
Group A—BA.....	\$11,750	\$12,270	\$12,790	\$13,310	\$13,830	\$14,350	\$14,870	\$15,390	\$15,910	\$16,430	\$16,950	\$17,470	\$17,990	-----
Group B—MA.....	12,745	13,265	13,785	14,305	14,825	15,345	15,865	16,385	16,905	17,425	17,945	18,465	18,985	-----
Group C—MA+30.....	13,245	13,765	14,285	14,805	15,325	15,845	16,365	16,885	17,405	17,925	18,445	18,965	19,485	-----
Group D—Doctors.....	13,730	14,250	14,770	15,290	15,810	16,330	16,850	17,370	17,890	18,410	18,930	19,450	19,970	-----
Class 15:														
Group A—BA.....	9,940	10,335	10,730	11,125	11,520	11,915	12,415	12,915	13,415	13,915	14,415	14,915	15,415	\$16,615
Group A-1—BA+15.....	10,435	10,830	11,225	11,620	12,015	12,410	12,910	13,410	13,910	14,410	14,910	15,410	15,910	17,610
Group B—MA.....	10,935	11,435	11,935	12,435	12,935	13,435	14,055	14,675	15,295	15,915	16,535	17,155	17,775	19,390
Group C—MA+30.....	11,435	11,935	12,435	12,935	13,435	13,935	14,555	15,175	15,795	16,415	17,035	17,655	18,275	19,900
Group D, masters' degree+60 or Doctor's	11,935	12,435	12,935	13,435	13,935	14,435	15,055	15,675	16,295	16,915	17,535	18,155	18,775	20,550

(As amended Sept. 3, 1974, Pub. L. 93-407, title II, § 202(1), (2), 88 Stat. 1042, 1045; Jan. 3, 1975, Pub. L. 93-635, §§ 4, 5, 88 Stat. 2175.)

AMENDMENTS

1975—Section 4 of Act Jan. 3, 1975, Pub. L. 93-635, amended the salary schedule, effective on the first day of the first pay period beginning on or after September 1, 1974, by—

(1) striking out "\$29,900" in service step 5 of class 3 and inserting in lieu thereof "\$29,990";

(2) striking out "13,620" in service step 9 of Group A-1 of class 15 and inserting in lieu thereof "13,520";

(3) striking out "Group B, master's degree" in class 15 and inserting in lieu thereof "Group B, bachelor's degree + 30 or master's degree";

(4) striking out "14,780" in service step 8 of Group C of class 15 and inserting in lieu thereof "14,730"; and

(5) striking out "17,180" in service step 12 of Group C of class 15 and inserting in lieu thereof "17,130".

Section 5 of such Act, effective on and after September 3, 1974, amended the salary schedule that became effective on the first day of first pay period beginning on or after January 1, 1975, as follows: (1) by striking out "10,410" in service step 6 of Group A-1 of class 15 and inserting in lieu thereof "12,410"; and (2) by striking

out "20,559" in Longevity step Y of Group D of class 15 and inserting in lieu thereof "20,550".

1974—Section 202(1) of Act Sept. 3, 1974, Pub. L. 93-407, amended the salary schedule generally, effective on the first day of the first pay period beginning after September 1, 1974, *Provided, however*, That salary paid to class 1A shall not exceed the amount payable to level III of the Executive Schedule and that the salary payable to any other class shall not exceed the amount payable to level V of the Executive Schedule.

Section 202(2) of such Act amended the salary schedule generally, effective on the first day of the first pay period beginning on or after January 1, 1975, except that salary paid to class 1A shall not exceed the amount payable to level III of the Executive Schedule and that the salary paid to any other class shall not exceed the amount payable to level V of the Executive Schedule.

SHORT TITLE

Section 201 of Act Sept. 3, 1974, Pub. L. 93-407, title II, provided: "This title [amending §§ 31-1501 and 31-1511; and enacting §§ 31-1501a, 31-1513, and provisions set out as notes under § 31-1501] may be cited as the 'Teachers' Salary Act Amendments of 1974'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-609, 31-632 note, 31-634, 31-635, 31-691a note, 31-733, 31-746, 31-1511, 31-1512, 31-1513, 31-1521, 31-1522, 31-1531 to 31-1536, 31-1542 to 31-1548.

NOTES TO DECISIONS

Laches

Complaint of temporary District of Columbia school teacher was barred by laches, where teacher first learned of potential cause of action on April 15, 1967, when she was notified of her salary placement and where she received definitive ruling thereon from chief examiner on May 1, 1967, affirming her salary placement, but teacher failed to institute suit for five years and made no further attempt to pursue her case administratively for more than two years. *C. L. Clark v. H. J. Scott, Superintendent of Schools, et al.* (D.C. App. 1974, 329 A. 2d 442).

Laches as bar to complaint arising out of District of Columbia teacher salary grade dispute was not precluded on theory that school officials had not been prejudiced, since back pay and retirement claim of nearly \$9,000 would no doubt require elimination of some educational services offered in school system's presently committed budget. *Id.*

§ 31-1501a. Annual comparability study of teachers salaries—Recommendations.

Beginning with the calendar year 1975, the District of Columbia Board of Education shall, by March 1 of each year, submit to the Mayor of the District of Columbia the—

(a) percentage rate of the cost-of-living change since the effective date of the last increase of the compensation schedule for educational personnel in the District of Columbia; and

(b) results of a study comparing compensation of teachers in the District of Columbia with (1) teachers in cities of comparable size, and (2) teachers within other jurisdictions of the Washington metropolitan area.

The Mayor shall submit the information submitted to him by the Board under this section to the Council of the District of Columbia along with his recommendations with respect to compensation (and other related matters) of educational personnel of the Board. (Sept. 3, 1974, Pub. L. 93-407, title II, § 203, 88 Stat. 1049.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Salary Act of 1955, as amended, which comprises this chapter.

SUBCHAPTER II.—CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

§ 31-1511. Board of Education to establish eligibility requirements—Methods of appointment, promotion and salary classification—Definitions.

(a) The Board of Education on written recommendation of the Superintendent of Schools is authorized to establish the eligibility requirements and prescribe methods of appointment and promotion for teachers, school officers, and other employees. The Board of Education is authorized and directed on written recommendation of the Superintendent of Schools, to classify and assign all teachers, school officers, and other employees to the salary classes and groups in section 31-1501. Teachers, school officers, and other employees on probationary or permanent status shall not be required to take any examinations, either mental or physical, to be continued in the positions in which they are employed on December 31, 1962, or to which they may be transferred and assigned under the provisions of section 31-1521 and section 31-1522. No teacher, school officer, or other employee shall be appointed or promoted to any position covered by section 31-1501 on probationary or permanent status unless he possesses a master's degree, except that (1) a person possessing a bachelor's degree may be appointed on probationary or permanent status as a teacher in the elementary or secondary schools or as a coordinator of practical nursing; (2) a person possessing a bachelor's degree may be promoted to the position of census supervisor or coordinator of practical nursing; (3) a person not possessing a bachelor's degree may be appointed on probationary or permanent status as a—

(A) shop teacher in the vocational education program,

(B) teacher of military science and tactics, or

(C) teacher of driver training,

if he submits acceptable evidence of equivalent training and experience in accordance with the rules of the Board; and (4) a person not possessing a bachelor's degree may be appointed on a probationary or permanent status as a census supervisor, or promoted to that position, if he submits acceptable evidence of equivalent training and experience in accordance with the rules of the Board.

* * * * *

(As amended Sept. 3, 1974, Pub. L. 93-407, title II, § 205(a), 88 Stat. 1050.)

AMENDMENT

1974—Section 205(a) of Act Sept. 3, 1974, Pub. L. 93-407, amended subsec. (a) by striking out "(D) attendance officer, or (E) child labor inspector," and inserting "or" after "tactics," in paragraph (B).

EFFECTIVE DATE OF 1974 AMENDMENT

Section 205(c) of Act Sept. 3, 1974, Pub. L. 93-407, provided: "The amendment made by subsection (a) shall be effective on and after the date of enactment of this Act."

APPOINTMENT AND PROMOTION REQUIREMENTS OF ATTENDANCE OFFICERS AND CHILD LABOR INSPECTORS

Section 205(b) of Act Sept. 3, 1974, Pub. L. 93-407, provided: "The employees in the category repealed by the amendment made by subsection (a) shall meet the general requirements of such section 2(a) [section 31-1511 (a)]."

§ 31-1513. Teaching certificates—Renewals—Rules and regulations.

(a) Each person receiving basic compensation under class 15 of the salary schedule in section 31-1501 shall be issued a five-year teaching certificate. Renewals shall be dependent upon application and six or more hours of appropriate credit earned during the preceding five-year period. The District of Columbia Board of Education shall establish appropriate rules, regulations, and requirements to carry out the purposes of this section.

(b) For the purposes of this section, class 15, group B, shall include persons possessing a master's degree or thirty appropriate semester hours beyond the bachelor's degree.

(c) For purposes of implementing this section the Board shall determine the appropriateness of the course work obtained in lieu of the degree. (Sept. 3, 1974, Pub. L. 93-407, title II, § 204, 88 Stat. 1049.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Salary Act of 1955, as amended, which comprises this chapter.

SUBCHAPTER III.—METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARY SCHEDULES

§ 31-1522. Types of positions to which chapter applies—Authority of Board to determine which positions meet established criteria and other matters—Teacher-aide positions—Initial assignment of school principal positions and periodic evaluation of duties and responsibilities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER V.—ACCOMPANYING LEGISLATION

§ 31-1542. Evening, summer, and Americanization schools—Salaries—Extra-duty pay.

(a) The Board is authorized to conduct as part of its public school system the following: summer school programs, extended school year programs, adult education programs, and Americanization schools. The pay for teachers, officers, and other education employees in the summer school programs, adult education school programs, and veterans' summer high school centers shall be as follows:

SUMMER SCHOOL TEACHERS AND ADULT EDUCATION SCHOOLS SALARY SCHEDULE

[To be effective on the first day of the first pay period beginning on or after September 1, 1974]

Classification	Per period		
	Step 1	Step 2	Step 3
Summer school (regular):			
Teachers, elementary and secondary schools; counselor, elementary and secondary schools; librarian, elementary and secondary schools; school social worker; speech correctionist, school psychologist.....	\$8.53	\$9.67	\$10.90
Psychiatric social worker.....	9.81	11.12	12.54
Veterans' summer school centers: Teacher.....	8.53	9.67	10.90
Adult education schools:			
Teacher.....	9.38	10.64	11.99
Assistant principal.....	13.13	14.90	16.79
Principal.....	14.54	16.49	18.59

SUMMER SCHOOL TEACHERS AND ADULT EDUCATION SCHOOLS SALARY SCHEDULE

[To be effective on the first day of the first pay period beginning on or after January 1, 1975]

Classification	Per period		
	Step 1	Step 2	Step 3
Summer school (regular):			
Teachers, elementary and secondary schools; counselor, elementary and secondary schools; librarian, elementary and secondary schools; school social worker; speech correctionist; school psychologist.....	\$8.79	\$9.97	\$11.23
Psychiatric social worker.....	10.11	11.47	13.11
Veterans' summer school centers: Teachers.....	8.79	9.97	11.23
Adult education schools:			
Teacher.....	9.67	10.97	12.35
Assistant principal.....	13.54	15.36	17.29
Principal.....	14.99	17.00	19.14

(As amended Sept. 3, 1974, Pub. L. 93-407, title II, § 202(3), (4), 88 Stat. 1049; Jan. 3, 1975, Pub. L. 93-635, § 11, 88 Stat. 2177.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Section 11 of Act Jan. 3, 1975, Pub. L. 93-635, effective on and after September 3, 1974, amended the salary schedule that became effective on the first day of the first pay period beginning on or after January 1, 1975, by striking out "9.61" in step 1 for Teachers in Adult Education Schools and inserting in lieu thereof "9.67".

1974—Section 202(3) of Act Sept. 3, 1974, Pub. L. 93-407, amended the schedule of pay rates in subsec. (a) generally, effective the first day of the first pay period beginning on or after September 1, 1974.

Section 202(4) of such Act amended the schedule of pay rates in subsec. (a) generally, effective the first day of the first pay period beginning on or after January 1, 1975.

§ 31-1542a. Summer school salaries—Appropriation chargeable.

Compensation payable to personnel employed in the summer school program of the public school system of the District of Columbia is hereby authorized to be charged to the appropriation for the fiscal year in which the pay periods end. (Oct. 26, 1973, Pub. L. 93-140, § 22, 87 Stat. 508.)

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Salary Act of 1955, as amended, which comprises this chapter.

APPROPRIATIONS

See note under § 1-226a.

§ 31-1543. Salary payable in semimonthly installments—Employee election.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 16.—PUBLIC HIGHER EDUCATIONAL INSTITUTIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 31-1717.

SUBCHAPTER I.—FEDERAL CITY COLLEGE

§ 31-1601. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1602. Board of Higher Education—Composition—Appointment of members—Chairman—Tenure—Vacancies — Compensation — Removal — Immunity from liability.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Abolishment of Board of Higher Education and transfer of functions, see § 31-1717.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1601, 31-1702.

§ 31-1603. Powers and duties of Board—Development of plans, establishment of College, and administration, generally.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Abolishment of Board of Higher Education and transfer of functions, see § 31-1717.

Ceremonial expenses, see § 31-1121.

Official expenses, see § 31-1122.

§ 31-1604. Space and facilities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1605. Fiscal accountability.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—WASHINGTON TECHNICAL INSTITUTE

§ 31-1621. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1622. Board of Vocational Education—Composition—Appointment of members—Chairman—Tenure — Vacancies — Compensation — Removal — Immunity from liability.

CROSS REFERENCE

Abolishment of Vocational Board and transfer of functions, see § 31-1717.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31-1621, 31-1702.

§ 31-1623. Powers and duties of Board—Development of plans, establishment of Institute, and administration, generally.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Abolishment of Vocational Board and transfer of functions, see § 31-1717.

Ceremonial expenses, see § 31-1121.

Official expenses, see § 31-1122.

NOTES TO DECISIONS

Jurisdiction of court

Complaint in which nontenured teacher at Washington Technical Institute of higher learning asserted that nonrenewal of her teaching contract without statement of reasons or opportunity for pretermination hearing violated her right of procedural due process was sufficient to invoke jurisdiction of federal district court under statute endowing district court with jurisdiction of civil actions arising under the Constitution, even though resolution of the due process issue required examination of legitimacy of her assertion of an expectancy of continued employment and that matter appeared to turn on questions of local law. *L. T. M. Cardinale v. Washington Technical Institute et al.* (1974, 500 F. 2d 791, 163 U.S. App. D.C. 123).

§ 31-1624. Space and facilities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1625. Fiscal accountability.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 17.—PUBLIC POSTSECONDARY EDUCATION REORGANIZATION

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

31-1701. Declaration of purpose.

31-1702. Definitions.

SUBCHAPTER II.—UNIVERSITY OF THE DISTRICT OF COLUMBIA

Sec.

- 31-1711. Establishment of Board of Trustees and University.
- 31-1712. Board of Trustees Nominating Committee.
- 31-1713. Suspension, removal, and termination of Trustees.
- 31-1714. Compensation of Trustees.
- 31-1715. Consolidation of existing public institutions of postsecondary education.
- 31-1716. Duties of Trustees.
- 31-1717. Personnel system.
- 31-1718. Transfer of functions, personnel, property, assets, and liabilities.
- 31-1719. Establishment as land-grant university.
- 31-1720. Same; State consent.

SUBCHAPTER III.—AUTHORIZATIONS

- 31-1721. Appropriations.

SUBCHAPTER IV.—MISCELLANEOUS

- 31-1731. Meetings of Trustees.
- 31-1732. Advisory committees.
- 31-1733. Gifts and contributions.
- 31-1734. Annual report.
- 31-1735. Authority of Board of Education.
- 31-1736. Authority of Council of the District of Columbia.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 31-1701. Declaration of purpose.

It is the intent of Congress to authorize a public land-grant university through the reorganization of the existing local institutions of public postsecondary education in the District of Columbia. It is the clear and specific intent to the Congress that vocational and technological education, as well as liberal arts, sciences, teacher education, and graduate and postgraduate studies, within the University be given at all times its proper priority in terms of funding with other units within the University, and that the land-grant funds be utilized by the University in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. 301-305, 307, 308) (known as the First Morrill Act). (Oct. 26, 1974, Pub. L. 93-471, title I, § 102, 88 Stat. 1423.)

INTENT OF COUNCIL

Section 2 of Act Sept. 9, 1975, D.C. Law 1-12, provided: "It is the intent of the Council of the District of Columbia to approve the Congressional intent (expressed in section 102 of the District of Columbia Public Postsecondary Education Reorganization Act [D.C. Code, § 31-1701 et seq.]) to authorize a public land grant university through the reorganization of the existing institutions of public postsecondary education in the District of Columbia. It is the clear and specific intent of the Council that the University provide a range of programs and studies designed to reach the widest possible number of citizens and residents of the District of Columbia including career and technological education, liberal arts, sciences, teacher education, and graduate and postgraduate studies.

Section 2 of Act Nov. 1, 1975, D.C. Law 1-36, provided: "It is the intent of the Council of the District of Columbia to approve the Congressional intent expressed in section 102 of the District of Columbia Public Postsecondary Education Reorganization Act (D.C. Code, secs. 31-1701 et seq.) (hereinafter referred to as the 'Act') to authorize a public land-grant University through the reorganization of the existing local institutions of public post secondary education in the District of Columbia, and that the land-grant funds shall be utilized by the University in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. 301-305, 307, 308) (known as the First Morrill Act). Additionally it is the clear and specific intent of the Council of the District of Columbia that the University provide a range of programs, studies and degrees

designed to reach the widest possible number of citizens and residents of the District of Columbia including career and technological education, liberal arts, sciences, teacher education; and associate, graduate, post graduate and professional degrees and studies. Central to this is a governing board with the authority to provide a policy framework and such administration as are necessary to carry out such policies under the law. The function of the board is to build a University to serve the residents of the District of Columbia consisting of, but not limited to, strong programs of liberal arts studies and vocational-technical education in accordance with the provisions of this Act."

EFFECTIVE DATE

Section 407 of Act Oct. 26, 1974, Pub. L. 93-471, title IV, 88 Stat. 1430, provided: "This Act [enacting this chapter] shall take effect July 1, 1975, unless the Council, after January 2, 1975, adopts legislation, in accordance with the District of Columbia Self-Government and Governmental Reorganization Act [Pub. L. 93-198], repealing this Act prior to July 1, 1975. In any case in which the Council adopts any such legislation amending or otherwise modifying this Act (other than its repeal), the foregoing provisions of this Act as so amended or modified shall take effect on July 1, 1975, unless the Council provides, by such legislation, for an effective date other than that provided by this section, in which case this Act, as so amended or modified take effect on the date prescribed by such legislation of the Council."

Section 407 of Act Oct. 26, 1974, was amended by section 3(d) of Act Sept. 9, 1975, D.C. Law 1-12, 22 DCR 1807, by striking out "July 1, 1975" each place it appeared and inserting in lieu thereof "July 1, 1976".

Section 407 of Act Oct. 26, 1974, was amended by Act Nov. 1, 1975, D.C. Law 1-36, 22 DCR 2934, to read as follows: "Title I [subchapter I of this chapter] and section 202 of this act [§ 31-1712] shall be effective immediately. All other provisions of this Act [this chapter] shall be effective on January 2, 1976."

EFFECTIVE DATE OF 1975 ACTS

Section 4 of Act Sept. 9, 1975, D.C. Law 1-12, 22 DCR 1807, provided: "This act, including the amendments [to § 31-1711 and 31-1717, and to sec. 407 of Pub. L. 93-471, set out as a note under this section] made by this act, shall be effective at the end of the 30 day period provided for Congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

Section 6 of Act Nov. 1, 1975, D.C. Law 1-36, 22 DCR 2935, provided: "This act [amending §§ 31-1702, 31-1711 to 31-1721, 31-1731 to 31-1736, and provisions set out in notes under this section] shall become effective on the day following the 30-day Congressional review period required of Council legislation under section 602 of the Self-Government and Governmental Reorganization Act [§ 1-147]."

SHORT TITLE

Section 101 of Act Oct. 26, 1974, Pub. L. 93-471, title I, 88 Stat. 1423, provided: "This Act [enacting this chapter and provisions set out in notes under this section] may be cited as the 'District of Columbia Public Postsecondary Education Reorganization Act'."

The first section of Act Sept. 9, 1975, D.C. Law 1-12, provided: "That this act [amending §§ 31-1711 and 31-1717, and provisions set out in a note under this section] may be cited as the 'University of the District of Columbia Effective Date Act'."

The first section of Act Nov. 1, 1975, D.C. Law 1-36, provided: "That this act [amending §§ 31-1702, 31-1711 to 31-1721, 31-1731 to 31-1736, and provisions set out in notes under this section] may be cited as 'The District of Columbia Public Postsecondary Education Reorganization Act Amendments'."

§ 31-1702. Definitions.

For the purpose of this chapter—

(a) The term "Trustees" means the Board of Trustees established under subchapter II of this chapter.

(b) The term "chief executive officer" means the chief executive and administrative officer of the University.

(c) The term "University" means the University of the District of Columbia authorized and directed to be established under subchapter II of this chapter.

(d) The term "academic and administrative head" means the academic and administrative head of each of the components of the University.

(e) The term "Mayor" means the Office of the Mayor of the District of Columbia established by section 1-161.

(f) The term "Council" means the Council of the District of Columbia established by section 1-141.

(g) The term "Board of Higher Education" means the Board of Higher Education established under section 31-1602.

(h) The term "Vocational Board" means the Board of Vocational Education established under section 31-1622.

(i) The term "Board" means the District of Columbia Board of Education established under section 31-101.

(j) The term "financial institution" means an insured bank as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813], or a savings and loan association as defined in section 401 of the National Housing Act [12 U.S.C. 1724.]

(k) The term "component" means that segment of the whole University such as a school, college, branch or campus, which, because of its nature, the Board of Trustees specifies as constituting an identifiable entity for the purpose of, but not limited to, being administered by an academic and administrative head. (Oct. 26, 1974, Pub. L. 93-471, title I, § 103, 88 Stat. 1424; Nov. 1, 1975, D.C. Law 1-36, § 3, 22 DCR 2909.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, substituted a definition of "chief executive officer" for "President" in subsec. (b); substituted a definition of "academic and administrative head" for "Provost" in subsec. (d); and added subsec. (k) defining "component".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

SUBCHAPTER II.—UNIVERSITY OF THE DISTRICT OF COLUMBIA

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 31-1702.

§ 31-1711. Establishment of Board of Trustees and University.

(a) There is hereby established a body corporate by name of the Board of Trustees of the University of the District of Columbia and by that name and style shall have perpetual succession. It shall be charged with the responsibility of governing the University of the District of Columbia and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by this section. Pursuant to this section and sections 31-1716 and 31-1733, it shall have the power to adopt, alter, and use a corporate seal which shall be judicially noticed; and to make contracts; to sue and be sued, to complain and defend in its own name in any court of competent jurisdiction; to make, de-

live, and receive deeds, leases and other instruments and to take title to real and other property in its own name; and to adopt, prescribe, amend, repeal, and enforce such by-laws, rules, and regulations as it may deem necessary for the governance and administration of the University.

(b) There is hereby authorized to be established an independent agency of the government of the District of Columbia known as the University of the District of Columbia which shall be governed by the Board of Trustees as established in subsection (a) of this section.

(c) Except as provided in subsection (d) of this section, such Board of Trustees shall consist of fifteen voting members selected in the following manner:

(1) eleven members shall be appointed by the Mayor by and with the advice and consent of the Council;

(2) one member shall be appointed by the student community of the University and shall be a full time student at the University; and

(3) three members shall be appointed by the alumni associations in the following manners:

(A) one member of the Trustees appointed by the Alumni Association of the District of Columbia Teachers College, with notice thereof to the Mayor within forty-five days after the effective date of this section;

(B) one member of the Trustees appointed by the Alumni Association of Federal City College, with notice thereof to the Mayor within forty-five days after the effective date of this section; and

(C) one member of the Trustees appointed by the Alumni Association of the Washington Technical Institute, with notice thereof to the Mayor within forty-five days after the effective date of this section.

(d) Prior to consolidation as authorized in section 31-1715, the Board of Trustees shall consist of seventeen voting members selected in the following manner:

(1) eleven members shall be selected in the same manner as in paragraph (1), subsection (c) of this section;

(2) three members shall be selected in the same manner as in paragraph (3), subsection (c) of this section; and

(3) three members shall be appointed by the Mayor *Provided* that one of such members shall be a full time student at Washington Technical Institute, one of such members shall be a full time student at Federal City College and one of such members shall be a full time student at the District of Columbia Teachers College.

(e) In the event that the appointments referred to in paragraphs (2) and (3) of subsection (c) of this section are not made within the time specified, the Mayor shall make the appointments.

(f) As the initial terms of the alumni members expire, the three alumni trustees shall be appointed by the Alumni Association of the University or the Mayor if no alumni association of such University exists.

(g) The Trustees shall hold the first meeting no later than thirty days after the confirmation and or

appointment of eleven of its members. The first meeting of the Trustees shall be convened by a member of the Trustees designated by the Mayor.

(h) The student member of the Trustees shall serve a one-year term of office; all Trustees may be selected to serve one successive term.

(i) The terms of non-student Trustees shall be for 5 years; except that the terms of office of the non-student members first taking office shall be determined by lots to provide:

- (1) Three shall serve terms of two years.
- (2) Three shall serve terms of three years.
- (3) Three shall serve terms of four years.
- (4) Five shall serve terms of five years.

(j) Any Trustee selected to fill a vacancy shall be selected only for the remainder of the term for which his or her predecessor was selected and in the same manner as the original selection. A Trustee may serve after the expiration of his term until his successor has qualified to take office.

(k) A Chairperson and Vice Chairperson (1) shall be selected by the Trustees from among the District of Columbia resident members (2) shall serve a one-year term as Chairperson or Vice Chairperson (3) may be reselected, and (4) cannot serve in such capacity beyond their term as member.

(l) Members of the Trustees may be employees of the United States or of the District of Columbia Government, unless they hold positions in clear conflict of interest.

(m) The chief executive officer of the University shall be a non-voting ex-officio member of the Trustees.

(n) All appointments under this section shall be made not later than forty-five days after the effective date of this section. (Oct. 26, 1974, Pub. L. 93-471, title II, § 201, 88 Stat. 1424; Sept. 9, 1975, D.C. Law 1-12, § 3 (a), (b), 22 DCR 1806; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2911.)

REFERENCE IN TEXT

For "the effective date of this section" referred to in subsecs. (c) (3) and (n), see Effective Date note under § 31-1701.

AMENDMENTS

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally.

Act Sept. 9, 1975, D.C. Law 1-12, amended subsecs. (b) and (c) by striking out "August 2, 1975", "June 30, 1976", and "September 2, 1975" and inserting in lieu thereof "August 2, 1976", "June 30, 1977", and "September 2, 1976", respectively.

EFFECTIVE DATE OF 1975 AMENDMENTS

See notes under § 31-1701.

§ 31-1712. Board of Trustees Nominating Committee.

(a) There is established within the Government of the District of Columbia a committee to be known as the University of the District of Columbia Board of Trustees Nominating Committee (hereinafter in this chapter referred to as the "Committee").

(b) The Committee shall consist of five members to be appointed as follows:

(1) Two members shall be appointed by the Mayor within thirty days after the effective date of this section.

(2) Three members shall be appointed by the Chairman of the Council of the District of Columbia, with the approval of the Council, within

thirty days after the effective date of this section.

(c) No individual may be appointed as a member of the Committee unless he or she—

(1) is a citizen of the United States;

(2) is a resident of the District of Columbia and has maintained his or her domicile within the District of Columbia for the twelve months immediately preceding the effective date of this section; and

(3) is not a member of the Council of the District of Columbia or an officer or an employee of the Government of the District of Columbia (including the judicial branch).

(d) Members of the Committee shall serve for terms of five years, except that of the members first appointed pursuant to paragraph (b) (1) of this section, one shall serve for one year and one for five years, as designated at the time of appointment; and of the members appointed pursuant to paragraph (b) (2) of this section, one shall serve for two years, one for three years and one for four years, as designated at the time of appointment.

(e) Whenever a vacancy on the Committee occurs, such vacancy shall be filled in the same manner in which the original appointment was made. Any individual appointed to fill a vacancy, occurring other than upon the expiration of a term shall serve only for the remainder of the term of such individual's predecessor.

(f) Within ten days following the date on which a majority of the members are first appointed pursuant to this section, such members so appointed shall hold their first meeting as members of the Committee.

(g) Except as otherwise provided in this section, the Committee shall act only at meetings called by the Chairperson of the Committee or a majority of the members thereof and only after notice has been given of such meeting to all members of the Committee.

(h) The Committee shall choose annually from among its members a Chairperson and such other officers as it deems necessary. The Committee may adopt such rules of procedure as may be necessary to govern the business of the Committee.

(i) Each agency of the Government of the District of Columbia shall furnish to the Committee, upon request, such records, information, services and such other assistance and facilities as may be necessary to enable the Committee to perform its function properly. Any information furnished to the Committee designated "confidential" by the person furnishing it to the Committee shall be treated by the Committee as privileged and confidential.

(j) The Committee shall have the function of nominating individuals to the Mayor for appointment as members of the Board of Trustees of the University of the District of Columbia other than the members of the Trustees appointed by the alumni associations and the student community and the three student Trustees appointed prior to consolidation. Additionally, the Committee shall fill any and all vacancies other than the alumni and student members occurring on such Board after the date on which a majority of the members first appointed

pursuant to this section hold their first meeting as members of the Board of Trustees.

(k) The Committee shall develop a list of names of not less than twenty-five persons, who must be residents of the District of Columbia and have maintained their domicile within the District of Columbia for one year immediately preceding the effective date of this section and who, in the opinion of the Committee, are qualified and available to be appointed to the Board of Trustees. The Committee is to transmit the list of names to the Mayor within thirty days from the date of the last appointment to the Committee.

(l) In the event of any vacancy on the Board of Trustees of the University of the District of Columbia, the Committee shall, within thirty days after such vacancy occurs, submit a list of three persons as nominees for appointment by the Mayor to fill the vacancy. If more than one such vacancy exists at the same time, the Committee shall submit a separate list of nominees for appointment to fill each such vacancy, and no individual's name shall appear on more than one such list. In filling such vacancy, the Mayor may appoint more than one individual from any list currently before the Mayor.

(m) Whenever a vacancy on the Board of Trustees is to occur as a result of the expiration of a term of a member, the Committee shall transmit a list of names to the Mayor of three nominees for appointment to fill such vacancy, at least thirty days prior to the expiration of such member's term.

(n) All Mayoral appointments which are subject to the provisions of this section shall be drawn from among the names of the persons transmitted to the Mayor by the Committee. (Oct. 26, 1974, Pub. L. 93-471, title II, § 202, 88 Stat. 1425; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2916.)

REFERENCE IN TEXT

For "the effective date of this section", referred to in subsecs. (b) (1), (2), (c) (2), and (k), see Effective Date note under § 31-1701.

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally. Prior to amendment, section related to suspension and removal of Trustees which is now covered by § 31-1713.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

§ 31-1713. Suspension, removal, and termination of Trustees.

(a) Any Trustee shall be automatically suspended from serving as such member after he has been found guilty of a felony by a court of competent jurisdiction. Upon a final determination of his guilt or innocence, the term of such member shall automatically terminate or be reinstated.

(b) The Board of Trustees shall have the power to remove any member, after fair notice and an opportunity to be heard, at any time for adequate cause which relates to such members' character or efficiency as a Trustee.

(c) The tenure of the student member shall automatically terminate if the status of such member ceases to be that of a full time student at the University. (Oct. 26, 1974, Pub. L. 93-471, title II, § 203,

88 Stat. 1425; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2921.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally. Prior to amendment, section related to compensation of Trustees which is now covered by § 31-1714.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

§ 31-1714. Compensation of Trustees.

Trustees shall serve without compensation, but may be reimbursed for their expenses, including per diem in lieu of subsistence, at the maximum rate equal to the daily equivalent provided for by grade 18 of the General Schedule established under section 5332 of title 5 of the United States Code, with a limit of \$4,000 per annum, while actually engaged in service for the Trustees. (Oct. 26, 1974, Pub. L. 93-471, title II, § 204, 88 Stat. 1426; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2922.)

AMENDMENT

1975—Act Nov. 1, D.C. Law 1-36, amended section generally. Prior to amendment, section related to consolidation of existing public institutions of postsecondary education which is now covered by § 31-1715.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

CROSS REFERENCE

Applicability of section to compensation of members of Board of Education, see § 31-1735.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1735.

§ 31-1715. Consolidation of existing public institutions of postsecondary education.

The Trustees shall by September 1, 1976, consolidate the existing public institutions of postsecondary education in the District of Columbia under a single management system to be called the University of the District of Columbia, with several programs, schools, colleges, institutes, campuses and other components that offer a comprehensive program of public postsecondary education. The institutions of public postsecondary education in the District of Columbia existing immediately prior to such consolidation shall be deemed abolished on the effective date of the consolidation. Thereafter, any reference in any law, rule, regulation, or other document of the United States or of the District of Columbia to such institutions shall be deemed to be a reference to the University of the District of Columbia. (Oct. 26, 1974, Pub. L. 93-471, title II, § 205, 88 Stat. 1426; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2922.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally. Prior to amendment, section related to duties of Trustees which is now covered by § 31-1716.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1711.

§ 31-1716. Duties of Trustees.

It shall be the duty of the Trustees to—

(a) Review the existing public institutions of postsecondary education with respect to (1) accreditation, (2) present programs and functions, and (3)

actual and potential capabilities, and (4) educational policies and procedures.

(b) (1) Establish the University of the District of Columbia consisting of, but not limited to, two major components, liberal and fine arts and vocational and technical education.

(2) Prepare and, from time to time, revise a long-range plan for the development of the University which shall include the type and scope of programs offered and envisioned. Such plan shall also include the development, expansion, integration, coordination and efficient use of the facilities, physical plant, curricula, and standards of public postsecondary education. Such initial plan and any revisions thereof shall be made available to the public, the Council of the District of Columbia and the Mayor for a period of not less than sixty days prior to its implementation and the Trustees shall hold such hearings and public forums as may be necessary to receive public response and comment on such plans.

(c) Establish or approve policies and procedures governing admissions, curricula, programs, graduation, the awarding of degrees, and general policy making for the components of the University.

(d) Prepare and submit to the Mayor, on a date fixed by the Mayor, an annual budget for the fiscal year beginning October 1, 1977. Such budget shall include a proposed financial operating plan for such fiscal year, and a capital and educational improvements plan for such fiscal year and the succeeding four fiscal years for the University. The Mayor and the Council shall, after review and consideration of the budget submitted by the Trustees, establish the maximum amount of funds for each of the major components of the University and the total University budget which will be allocated to the Trustees.

(e) The Trustees may transfer, during the fiscal year, any appropriation balance available for one item of appropriation to another item of appropriations or to a new program in an amount not to exceed \$50,000.

(f) Enter into negotiations and binding contracts pursuant to Council regulations regarding contracting with the governments of the United States and District of Columbia and other public and private agencies.

(g) Enter into negotiations and binding contracts pursuant to Council regulations to perform organized research, training and demonstrations on a reimbursable basis for the United States and the government of the District of Columbia and other public and private agencies.

(h) Fix tuition for students attending the University.

(i) Fix fees, in addition to tuition, to be paid by resident and nonresident students attending the University. Receipts from these fees shall be deposited in a revolving fund in one or more financial institutions in the District of Columbia, and shall be available for such purposes as the Trustees shall approve, without fiscal year limitation.

(j) Select, appoint, and fix the compensation for a chief executive officer of the University and of such staff for the Board of Trustees as it deems necessary and approve the appointment and com-

pensation of the academic and administrative heads of each of the components of the University and of such other officers as it deems necessary, including legal counsel. In no case shall any such compensation be fixed in an amount in excess of that provided for the Mayor unless specifically authorized by legislative act of the Council. The chief executive officer shall serve at the pleasure of the Trustees.

(k) Procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at daily rates for individuals not in excess of the maximum daily rate for GS-18 of the General Schedule under section 5332 of such title.

(l) Submit recommendations to the Mayor and the Council of the District of Columbia from time to time relating to legislation affecting the administration and programs of the University.

(m) Develop and define, in conjunction with the faculty, a policy governing academic freedom for the University and establish mechanisms to ensure its protection and enforcement.

(n) Perform such duties and make such rules and regulations as may be necessary to carry out the purposes of this chapter.

(o) Seek to establish with the Board a Coordination Committee to determine areas of cooperation, coordination and assistance.

(p) Utilize the services and seek the counsel and advice of the District of Columbia Commission on Postsecondary Education in planning the development of a program for public postsecondary education in the District of Columbia.

(q) Generally determine, control, supervise, manage, and govern all affairs of the University of the District of Columbia. Toward this end the Trustees are authorized to adopt such policies and regulations as it may deem wise. (Oct. 26, 1974, Pub. L. 93-471, title II, § 206, 88 Stat. 1427; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2923.)

AMENDMENT

1975—Nov. 1, 1975, D.C. Law 1-36, amended section generally. Prior to amendment, section related to the personnel system which is now covered by § 31-1717.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1711.

§ 31-1717. Personnel system.

(a) Notwithstanding any other provision of law, the Trustees are hereby authorized to establish, not earlier than one year and not later than five years after the effective date of this chapter, a personnel system (setting forth minimum standards) for all employees of components, facilities, and programs of the University, including but not limited to pay, contract terms, vacations, and sabbaticals, leave, residence, retirement, health and life insurance, employee disability, and death benefits, all at least equal to those provided by legislation enacted by Congress, or regulations adopted pursuant thereto, and applicable to such officers and employees immediately prior to the effective date of the system established pursuant to this section. Any provision in the personnel system established by the Trustees

under this section requiring employees to be residents of the District of Columbia shall apply only to employees hired after the effective date of such system.

(b) The personnel policies of the Trustees shall incorporate policies developed by the Trustees to guarantee collective bargaining rights of employees subject to this section.

(c) The personnel system which the Board of Trustees is authorized to establish under this section shall be submitted to the Mayor. Upon approval of the personnel system by the Mayor, it shall be transmitted to the Chairman of the Council and shall take effect at the end of the sixty day period beginning on the day that the personnel system is transmitted to the Chairman of the Council unless the Council during such sixty day period adopts a resolution disapproving, in whole or in part, such personnel system.

(d) Personnel legislation and policies in effect including without limitation, legislation and policies relating to tenure, appointments, promotions, discipline, separation pay, unemployment compensation, health disability and death benefits, leave, retirement, insurance and veterans preference applicable to such employees, shall continue to be applicable until such time as the Trustees shall, pursuant to this section, provide for coverage under a new personnel system.

(e) All actions affecting such personnel and such members shall, until such time as a personnel system is established by the Trustees superseding such laws and establishing a permanent personnel system for all employees of the University, continue to be subject to the provisions of Acts of Congress relating to the appointment, promotion, discipline, separation, and other conditions of employment applicable to officers and employees of the District government, and where applicable, to the provisions of the joint agreement between the Commissioners and the Civil Service Commission authorized by Executive Order Numbered 5491 of November 18, 1930, relating to the appointment of District personnel. (Oct. 26, 1974, Pub. L. 93-471, title II, § 207, 88 Stat. 1428; Sept. 9, 1975, D.C. Law 1-12, § 3(c), 22 DCR 1807; Nov 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2927.)

REFERENCE IN TEXT

For "the effective date of this chapter" referred to in subsec. (a), see Effective Date note under § 31-1701.

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally. Prior to amendment, section related to transfer of functions, personnel, property, assets, and liabilities, which is now covered by § 31-1718.

Act Sept. 9, 1975, D.C. Law 1-12, amended section by striking out "June 30, 1977". The section did not contain such a date, and the probable intent was to strike out "June 30, 1976" and insert in lieu thereof "June 30, 1977".

EFFECTIVE DATE OF 1975 AMENDMENTS

See note under § 31-1701.

CROSS REFERENCE

District government merit system, see § 1-162.

§ 31-1718. Transfer of functions, personnel, property, assets, and liabilities.

The Board of Higher Education and the Vocational Board shall be abolished on the day that the

Board of Trustees convenes its first meeting. Except as provided by this chapter all functions, powers, and duties of the Board of Higher Education and the Vocational Board under chapter 16 of this title shall be vested in and exercised by the Trustees. All employees, property (real and personal), and unexpended balances (available or to be made available) of appropriations, allocations, and all other funds and assets and liabilities of the Board of Higher Education and Vocational Board are authorized to be transferred to the Trustees, except the functions of licensing institutions to confer degrees as authorized by section 29-415. All rules, orders, obligations, determinations and any other understandings of the Board of Higher Education and the Board of Vocational Education shall remain in effect until such time as they may be lawfully amended, modified or repealed by the Trustees. (Oct. 26, 1974, Pub. L. 93-471, title II, § 208, 88 Stat. 1428; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2929.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally. Prior to amendment, section related to establishment as land-grant university which is now covered by § 31-1719.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

§ 31-1719. Establishment as land-grant university.

(a) In the administration of—

(1) the Act of August 30, 1890 (7 U.S.C. 321-326, 328) (known as the Second Morrill Act),

(2) the tenth paragraph under the heading "Emergency Appropriations" in the Act of March 4, 1907 (7 U.S.C. 322) (known as the Nelsen amendment),

(3) section 22 of the Act of June 29, 1935 (7 U.S.C. 329) (known as the Bankhead-Jones Act),

(4) the Act of March 4, 1940 (7 U.S.C. 331), and

(5) the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627),

the University shall be considered to be a university established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. 301-305, 307, 308) (known as the First Morrill Act); and the term "State" as used in the laws and provisions of law listed in the preceding paragraphs of this section shall include the District of Columbia.

(b) In the administration of the Act of May 8, 1914 (7 U.S.C. 341-346, 347a-349) (known as the Smith-Lever Act)—

(1) the University shall be considered to be a university established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. 301-305, 307, 308); and

(2) the term "State" as used in such Act of May 8, 1914,¹ shall include the District of Columbia, except that the District of Columbia shall not be eligible to receive any sums appropriated under section 3 of such Act [7 U.S.C. 343].

(c) In lieu of an authorization of appropriations for the District of Columbia under section 3 of such

¹ So in original. Probably should be "1914".

Act of May 8, 1914 [7 U.S.C. 343], there is authorized to be appropriated such sums as may be necessary to provide cooperative agricultural extension work in the District of Columbia under such Act. Such sums may be used to pay no more than one-half of the total cost of providing such extension work. Any reference in such Act (other than section 3 thereof) to funds appropriated under such Act shall in the case of the District of Columbia be considered a reference to funds appropriated under this subsection.

(d) Four per centum of the sums appropriated under subsection (c) for each fiscal year shall be allotted to the Federal Extension Service of the Department of Agriculture for administrative, technical, and other services provided by the Service in carrying out the purposes of this section. (Oct. 26, 1974, Pub. L. 93-471, title II, § 209(a)-(d), formerly § 208(a)-(d), 88 Stat. 1428; renumbered Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2911.)

CODIFICATION

Section is comprised of subssecs. (a)-(d) of sec. 209 (formerly sec. 208) of Act Oct. 26, 1974. Subsection (e) of that section amended section 361a of title 7, United States Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1720.

§ 31-1720. Same; State consent.

The enactment of this chapter shall, as respects the District of Columbia, be deemed to satisfy any requirement of State consent contained in any of the laws or provisions of law referred to in section 31-1719. (Oct. 26, 1974, Pub. L. 93-471, title II, § 210, formerly § 209, 88 Stat. 1429; renumbered Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2911.)

SUBCHAPTER III.—AUTHORIZATIONS

§ 31-1721. Appropriations.

(a) There are authorized to be appropriated out of any money in the Treasury to the credit of the District of Columbia such sums as may be necessary for carrying out the purposes of this chapter.

(b) The chief executive officer is authorized to provide for the expenditure of funds, in amounts not to exceed a total of \$5,000, for such purposes as may be deemed necessary within limits that may be specified in annual appropriations. The chief executive officer shall be personally responsible for the expenditure of appropriations made pursuant to this section, and such expenditures shall be supported by vouchers and shall be audited by the District of Columbia Auditor. (Oct. 26, 1974, Pub. L. 93-471, title III, § 301, 88 Stat. 1429; Nov. 1, 1975, D.C. Law 1-36, § 4, 22 DCR 2930.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, substituted "chief executive officer" for "President" in subsec. (b), and increased the authorization from \$2,000 to \$5,000.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

CROSS REFERENCE

District of Columbia Auditor, generally, see § 47-120.

SUBCHAPTER IV.—MISCELLANEOUS

§ 31-1731. Meetings of Trustees.

Meetings may be called by the Chairperson or a majority of the members of the Trustees. No official action may be taken by the Trustees except at a meeting of the Trustees at which a quorum is present. Eleven members shall constitute a quorum but a lesser number may hold hearings. Each meeting of the Trustees shall be open to the public and held in the District of Columbia with appropriate notice of each such meeting given to the general public, except a majority of the Trustees may elect to go into executive session to take action on personnel matters. The Trustees shall meet at stated times established by the Board of Trustees, but not less frequently than four times a year. (Oct. 26, 1974, Pub. L. 93-471, title IV, § 401, 88 Stat. 1429; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2931.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally, to increase from eight to eleven the members constituting a quorum and to add the last sentence relating to meetings at stated times at least four times a year.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

§ 31-1732. Advisory committees.

The Trustees shall appoint such advisory committees as are necessary to advise on educational policy. Such advisory committees may consist of members of the Trustees, students, faculty members, parents, governmental, education, business, industrial, labor, and community representatives. (Oct. 26, 1974, Pub. L. 93-471, title IV, § 402, 88 Stat. 1429; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2931.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally without making change.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

§ 31-1733. Gifts and contributions.

(a) The Trustees may accept services, moneys, gifts, endowments, donations, and bequests. The Trustees may in their discretion retain or not retain such in the form in which they are made.

(b) The Trustees shall establish in one or more financial institutions in the District of Columbia the District of Columbia Postsecondary Education Fund. There shall be deposited in such fund all gifts and contributions in whatever form, funds in receipt of services rendered, other than tuition, and all moneys not included in the annual operating and capital and educational improvements funds appropriated by Congress. Moneys deposited therein shall be available for investment and shall be distributed in such amounts and in such manner as the Trustees may determine. The Trustees are authorized to administer such fund in whatever manner the Trustees may deem wise and prudent, provided that such administration is lawful and does not impose any fiscal burden on the District of Columbia.

(c) It is not the intent that any income derived as a result of such fund shall take the place of any

District or Federal appropriations or any part thereof but that it shall supplement such appropriations to the end that the University may improve and increase its functions, may enlarge its areas of service and may become more useful to a greater number of people. Nothing in this section shall be construed to prevent the Trustees from receiving gifts, donations, and bequests from any source and from using the same for such lawful purposes as the donor or donors designate. (Oct. 26, 1974, Pub. L. 93-471, title IV, § 403, 88 Stat. 1429; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2932.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1711.

§ 31-1734. Annual report.

The Trustees shall make an annual report to the general public, Mayor, Council, and the Congress on December 31 of each year on the operation of programs and the expenditure of all funds for public postsecondary education in the District of Columbia. Such annual report shall include but not be limited to the source, amount, distribution and expenditure of all funds whatever the source; and general student enrollment data, including but not limited to race, sex, age, major area of study, previous and current residency and upon graduation or termination of study, employment placement data (consistent with existing statutes and Department of Health, Education and Welfare regulations). (Oct. 26, 1974, Pub. L. 93-471, title IV, § 404, 88 Stat. 1430; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2933.)

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally. The date of the annual report was changed from November 1 to December 31 of each year, and the second sentence relating to matters to be covered in the report was added.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

§ 31-1735. Authority of Board of Education.

(a) The Board may transfer, during the fiscal year, any appropriation balance available for one item of appropriation to another item of appropriation or to a new program in an amount not to exceed \$50,000.

(b) The Board may enter into negotiations and binding contracts pursuant to Council regulations regarding contracting with the governments of the United States and District of Columbia and other public and private agencies to render and receive services.

(c) The provisions in section 31-1714, relating to compensation of the Trustees, shall apply to the members of the Board of Education. (Oct. 26, 1974, Pub. L. 93-471, title IV, § 405, 88 Stat. 1430; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2934.)

AMENDMENTS

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally to add a new subsec. (c).

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

CROSS REFERENCE

Agreements between United States and District of Columbia for reimbursable services, generally, see § 1-826.

§ 31-1736. Authority of Council of the District of Columbia.

Notwithstanding any other provision of law, or any rule of law, nothing in this chapter shall be construed as limiting the authority of the Council to enact any act or resolution, after January 2, 1975, pursuant to the District of Columbia Self-Government and Governmental Reorganization Act with respect to any matter covered by this chapter. (Oct. 26, 1974, Pub. L. 93-471, title IV, § 406, 88 Stat. 1430; Nov. 1, 1975, D.C. Law 1-36, § 5, 22 DCR 2934.)

REFERENCE IN TEXT

The District of Columbia Self-Government and Governmental Reorganization Act, referred to in text, is the Act of Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 774. For classification of the Act to the Code, see the Parallel Reference Tables.

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-36, amended section generally without making any change.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 31-1701.

Chapter 18.—INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

Sec.

- 31-1801. Authority to enter into agreement.
- 31-1802. Designated State official.
- 31-1803. Filing and publication of contracts.
- 31-1804. Definition.

§ 31-1801. Authority to enter into agreement.

The Mayor of the District of Columbia is authorized to enter into and execute on behalf of the District of Columbia an agreement with any State or States legally joining therein in the form substantially as follows. (Dec. 7, 1974, Pub. L. 93-515, title I, § 101, 88 Stat. 1612.)

"THE INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL

"Article I—Purpose, Findings, and Policy

"1. The States party to this Agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this Agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the States party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

"2. The party States find that included in the large movement of population among all sections of the Nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from State to State in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other States. As a consequence, a significant number of professionally prepared and experienced educators is

lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their States of origin, can increase the available educational resources. Participation in this Agreement can increase the availability of educational manpower.

"Article II—Definitions

"As used in this Agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

"1. 'Educational personnel' means persons who must meet requirements pursuant to State law as a condition of employment in educational programs.

"2. 'Designated State official' means the education official of a State selected by that State to negotiate and enter into, on behalf of his State, contracts pursuant to this Agreement.

"3. 'Accept', or any variant thereof, means to recognize and give effect to one or more determinations of another State relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving State.

"4. 'State' means a State, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

"5. 'Originating State' means a State (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

"6. 'Receiving State' means a State (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

"Article III—Interstate Educational Personnel Contracts

"1. The designated State official of a party State may make one or more contracts on behalf of his State with one or more other party States providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the States whose designated State officials enter into it, and the subdivisions of those States, with the same force and effect as if incorporated in this Agreement. A designated State official may enter into a contract pursuant to this Article only with States in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on basis sufficiently comparable, even though not identical to that prevailing in his own State.

"2. Any such contract shall provide for:

"(a) Its duration.

"(b) The criteria to be applied by an originating State in qualifying educational personnel for acceptance by a receiving State.

"(c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

"(d) Any other necessary matters.

"3. No contract made pursuant to this Agreement shall be for a term longer than five years by any such contract may be renewed for like or lesser periods.

"4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating State approval of the program or programs involved can have occurred. No contract made pursuant to this Agreement shall require acceptance by a receiving State of any person qualified because of successful completion of a program prior to January 1, 1954.

"5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving State.

"6. A contract committee composed of the designated State officials of the contracting States or their repre-

sentatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting States.

"Article IV—Approved and Accepted Programs

"1. Nothing in this Agreement shall be construed to repeal or otherwise modify any law or regulation of a party State relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that State.

"2. To the extent that contracts made pursuant to this Agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

"Article V—Interstate Cooperation

"The party States agree that:

"1. They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this Agreement.

"2. They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

"Article VI—Agreement Evaluation

"The designated State officials of any party States may meet from time to time as a group to evaluate progress under the Agreement, and to formulate recommendations for changes.

"Article VII—Other Arrangements

"Nothing in this Agreement shall be construed to prevent or inhibit other arrangements or practices of any party State or States to facilitate the interchange of educational personnel.

"Article VIII—Effect and Withdrawal

"1. This Agreement shall become effective when enacted into law by two States. Thereafter it shall become effective as to any State upon its enactment of this Agreement.

"2. Any party State may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States.

"3. No withdrawal shall relieve the withdrawing State of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

"Article IX—Construction and Severability

"This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any State or of the United States, or the application thereof to any Government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any Government, agency, person, or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any State participating therein, the Agreement shall remain in full force and effect as to the State affected as to all severable matters."

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1802. Designated State official.

The "designated State official" for the District of Columbia shall be the Superintendent of Schools of the District of Columbia. The Superintendent shall enter into contracts pursuant to Article III of the Agreement only with the approval of the specific text thereof by the Board of Education of the District of Columbia. (Dec. 7, 1974, Pub. L. 93-515, title I, § 102, 88 Stat. 1615.)

§ 31-1803. Filing and publication of contracts.

True copies of all contracts made on behalf of the District of Columbia pursuant to the Agreement shall be kept on file in the office of the Board of Education of the District of Columbia and in the office of the Mayor of the District of Columbia. The Superintendent of Schools shall publish all such contracts in convenient form. (Dec. 7, 1974, Pub. L. 93-515, title I, § 103, 88 Stat. 1615.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 31-1804. Definition.

As used in the Interstate Agreement on Qualification of Educational Personnel, the term "Governor" when used with reference to the District of Columbia shall mean the Mayor of the District of Columbia. (Dec. 7, 1974, Pub. L. 93-515, title I, § 104, 88 Stat. 1615.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 19.—COMMISSION ON THE ARTS AND HUMANITIES

Sec.

31-1901. Authority of Council.

31-1902. Definitions.

31-1903. Establishment of Commission.

31-1904. Powers.

31-1905. Administration.

31-1906. Miscellaneous.

§ 31-1901. Authority of Council.

The enactment of this act by the Council is done pursuant to the authority vested in the Council under section 1-144(b). (Oct. 21, 1975, D.C. Law 1-22, § 2, 22 DCR 2083.)

SHORT TITLE

The first section of Act Oct. 21, 1975, D.C. Law 1-22, provided "That this act [enacting this chapter] may be cited as the 'Commission on the Arts and Humanities Act.'"

REPEALERS; TRANSFER OF PROPERTY ETC.

Section 8 of Act Oct. 21, 1975, D.C. Law 1-22, provided: "The order of the Commission[er] of the District of Columbia, numbered 74-4, issued January 7, 1974, is hereby repealed and the Commission on the Arts and Humanities established by that order is abolished. All property, records, and unexpended balances of appropriations and other money available to that Commission on the Arts and

Humanities is transferred to the Commission established by this act."

§ 31-1902. Definitions.

As used in this chapter—

(1) The term "Mayor" means the Mayor of the District of Columbia established under section 1-161.

(2) The term "Council" means the Council of the District of Columbia established under section 1-141.

(3) The term "Commission" means the Commission on the Arts and Humanities established by section 31-1903.

(4) The term "arts" includes but is not limited to music (instrumental and vocal), dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, costume and fashion design, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, exhibition of those major art forms, and the study and application of the arts to the human environment.

(5) The term "humanities" includes, but is not limited to, the study of the following: language, both modern and classical; linguistics; literature; history; jurisprudence; philosophy; archeology; comparative religion; ethics; the history, criticism, theory, and practice of the arts; those aspects of the social sciences which have humanistic content and employ humanistic methods; and the study and application of the humanities to the human environment with particular attention to the relevance of the humanities to the current conditions of national life. (Oct. 21, 1975, D.C. Law 1-22, § 3, 22 DCR 2083.)

§ 31-1903. Establishment of Commission.

(a) In order to evaluate and initiate action on matters relating to the arts, to encourage programs and the development of programs which promote progress in the arts, there is established, in the Office of the Mayor, in the District of Columbia, a commission to be known as the Commission on the Arts and Humanities. The Commission shall consist of eighteen members appointed by the Mayor, with the advice and consent of the Council. Each member appointed to the Commission shall be a person who has displayed an interest or an ability in one of the various fields of the arts or humanities and/or has been active in the furtherance of the arts or humanities in the District of Columbia. Members shall be appointed to ensure that they are representative of all the various geographic areas and neighborhoods within the District of Columbia.

(b) Members of the Commission shall serve terms of three years; except, of the members first appointed, six members shall be appointed for one year, six members shall be appointed for two years, and six shall be appointed for three years, as determined by the Mayor. Members of the Commission may be reappointed, but cannot serve more than two consecutive terms. Terms shall regularly begin on 1 July and end on 30 June of the respective calendar years, including the members first appointed.

(c) Should a vacancy occur, a successor shall be appointed by the Mayor within 30 days, with the advice and consent of the Council to serve until the end of the term of the member whom that successor

succeeds. Failing to receive the nomination within the 30 days, the Council shall appoint a person to fill the vacancy. Members of the Commission on the Arts and Humanities established under Organization Order number 74-4 of January 7, 1974, issued by the Commissioner of the District of Columbia, shall continue to serve until the members of the Commission established under this chapter are appointed and qualify. The Mayor shall nominate members to the new commission within thirty days of October 21, 1975.

(d) The Mayor shall nominate the chairperson for the Commission.

(e) Members of the Commission shall serve without compensation, but shall be entitled to receive, in accordance with applicable District of Columbia regulations, reimbursement for expenses incurred while actually performing duties vested in the Commission. (Oct. 21, 1975, D.C. Law 1-22, § 4, 22 DCR 2084.)

CODIFICATION

In subsec. (c), "October 21, 1975" has been substituted for "enactment of this act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31-1902.

§ 31-1904. Powers.

The Commission shall—

(a) take action concerning the needs of the residents of the District of Columbia for activities in the arts and humanities, and concerning the development and improvement of activities in the arts and humanities in the District of Columbia;

(b) prepare an annual plan of artistic projects and productions in the District of Columbia meeting the requirements of sections 5(c) and 5(g) of the National Foundation on the Arts and Humanities Act of 1973, and act as the designated State agency for the District of Columbia, as referred to in Section 5(g)(2)(A) of the Foundation on Arts and Humanities Act of 1965, as amended;

(c) make grants to individuals and groups of individuals for projects and productions in the arts and humanities;

(d) cooperate with governmental departments and agencies, private organizations, and residents of the District of Columbia to develop and undertake programs which will encourage maximum participation in activities in the arts and humanities and promote greater appreciation and enjoyment of the arts and humanities;

(e) accept gifts, contributions and bequests of money and property to carry out the purposes of this chapter, which gifts shall be deposited in any depository in compliance with the laws of the District of Columbia;

(f) be empowered to appoint advisory panels in the various fields of the arts and humanities, as the Commission may deem necessary, the members of which shall serve without compensation;

(g) adopt and modify by-laws and be empowered to adopt regulations as authorized by law. (Oct. 21, 1975, D.C. Law 1-22, § 5, 22 DCR 2086.)

REFERENCES IN TEXT

Sections 5(c) and 5(g) of the National Foundation on the Arts and Humanities Act of 1973, referred to in subsec. (b), is probably a reference to sections 5(c) and 5(g) of the National Foundation on the Arts and the Humanities Act of 1965, Pub. L. 89-209, 79 Stat. 846, which are classified to section 954(c) and (g) of title 20, U.S. Code. Section 954(c) and (g) was amended by section 2(a)(3), (4) of the National Foundation on the Arts and the Humanities Amendments of 1973, Pub. L. 93-133, 87 Stat. 462, 463.

Section 5(g)(2)(A) of the Foundation on Arts and Humanities Act of 1965, as amended, referred to in subsec. (b), is probably a reference to section 5(g)(2)(A) of the National Foundation on the Arts and the Humanities Act of 1965, Pub. L. 89-209, 79 Stat. 846, which is classified to section 954(g)(2)(A) of title 20, U.S. Code.

§ 31-1905. Administration.

(a) There shall be an executive director for the Commission who shall be appointed by the Commission. The executive director shall be the chief administrative officer of the Commission and shall be responsible for supervising the remainder of the staff of the Commission. He shall report regularly to the Commission on his activities. The executive director shall receive annual compensation fixed in accordance with chapter 51 of Title 5, U.S. Code.

(b) The Commission shall meet monthly, except when a meeting is cancelled by the chairperson and a majority of the Commission. Special meetings of the Commission may be called by the Mayor, Council, chairperson of the Commission, or upon the request of five members of the Commission.

(c) The Commission shall prepare and submit to the Mayor an annual budget to be included in the regular budget process of the District of Columbia developed in accordance with subchapter I of chapter 2A of title 47.

(d) The Chairperson shall submit to the Mayor and the Council the annual reports of the Commission's activities, and its plans, recommendations, and projections for the following year. These reports shall accompany the budget request in subsection (c). (Oct. 21, 1975, D.C. Law 1-22, § 6, 22 DCR 2087.)

§ 31-1906. Miscellaneous.

(a) The Mayor shall instruct the Office of Management and Budget Systems to coordinate with the Commission the establishment of a bookkeeping and accounting system to allow for swift transference of grants monies from the District Government to a recipient, and shall instruct that Office, in concert with the Commission, to establish a voucher system which would also allow for the swift transference of funds from the District Government to grant recipients.

(b) Nominees for the Commission shall be residents of the District of Columbia.

(c) The Commission shall establish procedures in its by-laws to handle conflicts of interest in the awarding of grants, when any commissioner has either a structural or fiduciary relationship with a grantee. (Oct. 21, 1975, D.C. Law 1-22, § 7, 22 DCR 2088.)

TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS

Chapter 2.—WASHINGTON HUMANE SOCIETY

§ 32-209. Commissioner to aid in enforcing laws affecting children—Detailing of police to assist society—Arrest of offenders—Children in house of ill-fame.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-210. Detailing of police to aid in enforcement of laws relating to cruelty to animals.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—HOSPITALS AND ASYLUMS—GENERAL PROVISIONS

Sec.

32-331. Payments to needy patients.

32-332. Care of patients in sectarian and nonsectarian institutions.

32-333. Stipends for patients.

32-334. Benefits in lieu of salary for certain workers in District facilities.

§ 32-301. Private hospitals and asylums—To be licensed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-303. Penalties for violation of sections 32-301, 32-302 or regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-304. District of Columbia Council to make regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-306. Smallpox hospital—Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-308. Admission of pay patients to psychopathic ward of Gallinger Hospital.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Quality of care

In action against District of Columbia Government, evidence established that treatment and care of patients in facilities at General Hospital fell well below any acceptable level of quality and efficiency and that the hospital had failed to provide adequate medical care and service to patients in accordance with recognized standards of medical practice in community; and D.C. Government would be required to submit to district court a detailed plan of corrective action and would be required to take immediate steps to fill all budgeted positions then vacant at hospital. *Greater Washington D. C. Area Council of Senior Citizens et al. v. District of Columbia Government et al.* (1975, 406 F. Supp. 768).

§ 32-309. Admission of pay patients to contagious-disease ward of Gallinger Hospital.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Quality of care

In action against District of Columbia Government, evidence established that treatment and care of patients in facilities at General Hospital fell well below any acceptable level of quality and efficiency and that the hospital had failed to provide adequate medical care and service to patients in accordance with recognized standards of medical practice in community; and D.C. Government would be required to submit to district court a detailed plan of corrective action and would be required to take immediate steps to fill all budgeted positions then vacant at hospital. *Greater Washington, D.C. Area Council of Senior Citizens et al. v. District of Columbia Government et al.* (1975, 406 F. Supp. 768).

§ 32-310. Admission of pay patients to Tuberculosis Hospital.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-312. Children's Tuberculosis Sanatorium—Construction and equipping authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-313. Admission of pay patients to Children's Tuberculosis Sanatorium.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-316. Providence and Garfield Memorial Hospitals to accept contagious-disease cases sent by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-322. Availability of appropriations to furnish medical services to non-indigent persons.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-323. Conveyance of property to Columbia Hospital.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-326. Standards of indigency—Emergency patients.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-327. Volunteer services in connection with medical services in Health Department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-328. Volunteer services in connection with Glenn Dale Tuberculosis Sanatorium.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-329. Volunteer services in connection with Galinger Municipal Hospital and the Tuberculosis Hospital.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-331. Payments to needy patients.

The Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized to furnish cash payments to needy patients in hospitals operated by or under contract (relating to the care of needy patients) with the District of Columbia in such amounts and at such times as he may determine. (Oct. 26, 1973, Pub. L. 93-140, § 4, 87 Stat. 504.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

§ 32-332. Care of patients in sectarian and nonsectarian institutions.

Notwithstanding any other provision of law, the Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized from time to time to enter into contracts with institutions under sectarian and nonsectarian control, and to make payments to such institutions, for the care of indigent and medically indigent patients in hospitals and for the care and maintenance of persons who are a responsibility of the District of Columbia. The Council shall, in determining the level of payment to sectarian and nonsectarian institutions, take into consideration average costs in caring for like persons in area institutions, and in no event shall such payment for medical services exceed reasonable costs as determined under the District of Columbia medicaid program. (Oct. 26, 1973, Pub. L. 93-140, § 5, 87 Stat. 505.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

§ 32-333. Stipends for patients.

The Mayor of the District of Columbia is authorized, pursuant to regulations prescribed by the Council of the District of Columbia, to provide for the payment of stipends to patients and residents employed in institutions of or under programs sponsored by the government of the District of Columbia as an aid to their rehabilitation or for training purposes. Nothing contained herein shall be construed as conferring employee status on any person covered by this section. (Oct. 26, 1973, Pub. L. 93-140, § 6, 87 Stat. 505.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

§ 32-334. Benefits in lieu of salary for certain workers in District facilities.

Notwithstanding any other provision of law, the Mayor of the District of Columbia is authorized to furnish, pursuant to regulations prescribed by the Council of the District of Columbia, subsistence, living quarters, and laundry in lieu of salary to persons authorized by the Mayor to work in facilities of the government of the District of Columbia for the purposes of securing training and experience in their future vocations. Nothing contained herein shall be construed as conferring employee status on any person covered by this section, nor as superseding the requirements of sections 5352 and 5353 of title 5, United States Code, relating to student employees specified therein who are assigned or attached to a hospital, clinic, or medical or dental laboratory. (Oct. 26, 1973, Pub. L. 93-140, § 7, 87 Stat. 505.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

Chapter 4.—SAINT ELIZABETHS HOSPITAL

§ 32-401. Expense of indigent insane admitted to Saint Elizabeths Hospital from District of Columbia—Admission.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Rewards for apprehension of fugitives from welfare institutions, see § 24-426.

§ 32-404. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-416. Regulations relating to Board of Public Welfare—District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—INDUSTRIAL HOME SCHOOL

§ 32-501. Control and management—Board of Public Welfare—Supplies—Disposition of income.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-503. Exchange of portion of Naval Observatory grounds for portion of Industrial Home School site—Sale of balance of tract—Use of land if not sold—Funds available for new school site.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—FOREST HAVEN

§ 32-601. Authority to acquire site, erect buildings for home and school—Title to land—Property under jurisdiction of Commissioner of the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-602. Control and supervision of institution—Name.

CROSS REFERENCES

Commitment of substantially retarded persons, see § 21-1101 et seq.

Rewards for apprehension of fugitives from welfare institutions, see § 24-426.

§ 32-604. Rules and regulations to be prescribed—Annual reports—Inventory.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-605. Superintendent—Appointment and qualifications.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7B.—PLACEMENT OF CHILDREN IN FAMILY HOMES

§ 32-782. Child-placing agency—License.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-783. Appointment of supervisory committee by Commissioner—Composition and tenure—Chairman—Promulgation of rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-784. Application for license—Form—Investigation by Board—Provisional license—Term and renewal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-785. Persons authorized to place children—Custody, control, supervision, and visitation by agency—Confidential records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-785a. Agreements with child placement agencies outside of the District—Authority of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-786. Agency vested with parental rights—Consent to adoption—Adoption petition—Parents' relinquishment of rights—Recordation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3-114, 3-115, 3-117, 16-304.

§ 32-787. Revocation of license of child-placing agency—Notice—Reinstatement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-790. Compensation for services in connection with child placement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-791. "Commissioner" defined—Delegation of functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—MISCELLANEOUS

§ 32-1001. Visitation of charities supported in whole or in part by District revenues by Commissioner of the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-1002. Visitorial power of Commissioner over certain designated organizations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-1006. Voluntary medical service for charitable institutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-1009. Sale of products of Home for Aged and Infirm.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-1010. Admission of pay patients to Home for Aged and Infirm.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—INTERSTATE COMPACT ON JUVENILES**§ 32-1102. Authority to enter into compact.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 32-1103. Compact administrator—Appointment—Authority — Duties — Supplementary agreements — Payments.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 33.—FOOD AND DRUGS

Chapter 1.—ADULTERATION

Sec.

33-111. Omitted.

§ 33-104. Rules and regulations for collecting and examining drugs and food.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-111. Omitted.

Section, which related to special services for detection of adulteration of drugs, foods, etc., is omitted as it was not continued by the District of Columbia Appropriation Act, 1975. Previously it was continued for the fiscal years, and by the statutes, listed below. For further details for prior years, see the "Similar Provisions" and "Continuation of 1960 Act" notes under this section in the main edition of the Code.

1974—Aug. 14, 1973, Pub. L. 93-91, § 10, 87 Stat. 310.

1973—July 10, 1972, Pub. L. 92-344, § 11, 86 Stat. 455.

Chapter 3.—MILK, CREAM, AND ICE CREAM

Sec.

33-322. Omitted.

§ 33-302. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-303. Dairy requirements—Permit—Application.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-304. Suspension of permit—Statement of reasons—Notice.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-305. Shipment of dairy products into District permitted under certain conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-307. Dairy products to be seized if brought into District illegally—Owner to be notified of seizure—Destruction.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-308. Rules and regulations to protect supply—Publication.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 33-309. Seller of dairy products in District to determine that shipper has permit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-322. Omitted.

Section, which authorized an automobile allowance for dairy inspectors, is omitted as it was not continued by the District of Columbia Appropriation Act, 1975. Previously it was continued for the fiscal years, and by the statutes, listed below under the heading "Continuation of 1960 Act". For prior years, see statutes listed below under the heading "Prior Provisions".

CONTINUATION OF 1960 ACT

Section 10 of the District of Columbia Appropriation Act, 1974 approved Aug. 14, 1973, Pub. L. 93-91, 87 Stat. 310, provided in part:

"Except as otherwise provided herein, limitations and legislative provisions contained in the District of Columbia Appropriation Act, 1961, shall be applicable during the current fiscal year."

Similar provisions were contained in the following prior appropriation acts:

1973—July 10, 1972, Pub. L. 92-344, § 11, 86 Stat. 455.

1972—Dec. 18, 1971, Pub. L. 92-202, § 13, 85 Stat. 687.

1971—July 16, 1970, Pub. L. 91-337, § 14, 84 Stat. 437.

1970—Dec. 24, 1969, Pub. L. 91-155, § 15, 83 Stat. 433.

1969—Aug. 10, 1968, Pub. L. 90-473, § 15, 82 Stat. 700.

1968—Nov. 13, 1967, Pub. L. 90-134, § 15, 81 Stat. 441.

1967—Nov. 2, 1966, 80 Stat. 1173, Pub. L. 89-743, § 15.
 1966—July 16, 1965, 79 Stat. 242, Pub. L. 89-75, § 15.
 1965—Aug. 22, 1964, 78 Stat. 593, Pub. L. 88-479, § 15.
 1964—Dec. 30, 1963, 77 Stat. 840, Pub. L. 88-252, § 15.
 1963—Oct. 23, 1962, 76 Stat. 1155, Pub. L. 87-867, § 15.
 1962—Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, § 15.

PRIOR PROVISIONS

1961—Apr. 8, 1960, 74 Stat. 21, Pub. L. 86-412, § 1.
 1960—July 23, 1959, 73 Stat. 229, Pub. L. 86-104, § 1.
 1959—Aug. 6, 1958, 72 Stat. 502, Pub. L. 85-594, § 1.
 1958—June 27, 1957, 71 Stat. 196, Pub. L. 85-61, § 1.
 1957—June 29, 1956, 70 Stat. 444, ch. 479, § 1.
 1956—July 5, 1955, 69 Stat. 251, ch. 272, § 1.
 1955—July 1, 1954, 68 Stat. 383, ch. 499, § 1.
 1954—July 31, 1953, 67 Stat. 284, ch. 299, § 1.
 1953—July 5, 1952, 66 Stat. 379, ch. 576, § 1.
 1952—Aug. 3, 1951, 65 Stat. 161, ch. 292, § 1.
 1951—July 18, 1950, 64 Stat. 356, ch. 467, § 1.
 1950—June 29, 1949, ch. 279, § 1, 63 Stat. 312.
 1949—June 19, 1948, ch. 555, § 1, 62 Stat. 546.
 1948—July 25, 1947, ch. 324, § 1, 61 Stat. 436.
 1947—July 9, 1946, ch. 544, § 1, 60 Stat. 511.
 1946—June 30, 1945, ch. 209, § 1, 59 Stat. 282.
 1945—June 28, 1944, ch. 300, § 1, 58 Stat. 518.
 1944—July 1, 1943, ch. 184, § 1, 57 Stat. 327.
 1943—June 27, 1942, ch. 452, § 1, 56 Stat. 439.
 1942—July 1, 1941, ch. 271, § 1, 55 Stat. 517.
 1941—June 12, 1940, ch. 333, § 1, 54 Stat. 323.

Chapter 4.—NARCOTIC DRUGS

§ 33-401. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Cannabis

Evidence sustained defendant's conviction for unlawful distribution of marijuana even though the marijuana which he concededly sold to undercover officer was not necessarily of the species *Cannabis sativa* L., the only species of marijuana which is specifically named in federal statutes and local statutes of the District of Columbia. *United States v. S. A. Walton* (1975, 514 F. 2d 201, 168 U.S. App. D.C. 305).

Congress in enacting provision proscribing possession of narcotic drug, which was defined as including "cannabis" which was in turn defined as including all parts of the plant *Cannabis sativa* L., did not intend to declare contraband only one particular species of cannabis and legalize the possession in the District of Columbia of all other species, if any, of cannabis; Congress intended to ban the manufacture, use and possession of all of chemical THC contained in and extractable from cannabis plants. *United States v. V. H. Johnson* (D.C. App. 1975, 333 A. 2d 393).

§ 33-402. Acts declared unlawful.

NOTES TO DECISIONS

Appeal and error

Where, although defendants in joint drug prosecution failed in trial court to raise contention that joinder of both federal and District of Columbia charges deprived them of equal protection of laws, such issue presented sole question of law which would not be materially illuminated by development of further record in trial court, Court of Appeals would consider such issue despite its being raised for first time on appeal. *United States v. G. E. Jones* (1975, 527 F. 2d 817, — U.S. App. D.C. —).

Even though government presented strong case against defendant, error in permitting reference to statement made by defendant at the time he was arrested to the effect that he was addicted, which statement had not been disclosed to defendant despite requests, could not be held harmless as the statement not only impeached defendant's credibility but undermined a significant element in his defense, i.e., that he had not been addicted at

the time of his arrest. *United States v. S. J. Lewis* (1975, 511 F. 2d 798, 167 U.S. App. D.C. 232).

Constitutionality

Trial court, which dismissed prosecutions for unlawful possession of marijuana on ground that statutory scheme of criminal prohibitions and penalties for mere possession is unconstitutional under the Eighth Amendment, misconceived its function in its approach to the constitutionality of the statute when it weighed evidence as to harmful effects of use of marijuana and resolved the conflict to its own satisfaction; since matter was at least debatable, court should have deferred to congressional judgments and, in any event, since subject matter was under consideration by Congress judicial action constituted unwarranted intrusion into the legislative province. *United States v. I. D. Thorne et ano.* (D.C. App. 1974, 325 A.2d 764).

Construction

Congress in enacting provision proscribing possession of narcotic drug, which was defined as including "cannabis" which was in turn defined as including all parts of the plant *Cannabis sativa* L., did not intend to declare contraband only one particular species of cannabis and legalize the possession in the District of Columbia of all other species, if any, of cannabis; Congress intended to ban the manufacture, use and possession of all of chemical THC contained in and extractable from cannabis plant. *United States v. V. H. Johnson* (D.C. App. 1975, 333 A. 2d 393).

Defense of addiction

Even if Court of Appeals is not statutorily precluded from permitting criminal defendant charged with possession of heroin for personal use or possession of narcotics paraphernalia to raise affirmative defense of lack of common-law criminal responsibility due to heroin addiction, Court would not upset balance of multipronged effort to reduce heroin addiction through law enforcement and treatment. *L. F. Gorham v. United States* (D.C. App. 1975, 339 A. 2d 401).

Congress' avowed intent to prosecute and convict drug users where indicated for all crime nullifies authority of Court of Appeals to formulate a new common-law rule of criminal responsibility which would insulate those same drug users from criminal punishment. *Id.*

Decision permitting a defendant charged with possession of narcotics and narcotics paraphernalia to raise affirmative defense that he lacked capacity to refrain from using narcotics by reason of drug addiction can not be rested on trial court record which does not disclose basis for expert witness' conclusion that defendant had an overwhelming compulsion psychologically to use heroin and there was no showing whether finding of addiction related to criminal responsibility or only to habitual use. *W. R. Franklin v. United States* (D.C. App. 1975, 339 A. 2d 398).

Dismissal

Motions judge erred in dismissing prosecutions for possession of narcotics with prejudice for want of prosecution after arresting officer failed to appear at hearing on accused's motion to suppress following dismissal of prior prosecution for want of prosecution because of officer's failure to appear at trial where accused made no proffer of evidence that he had been prejudiced by delay and advanced no claim that he had been denied a speedy trial and less than one year had elapsed between date of arrest and hearing on motion to suppress. *United States v. R. W. Mack* (D.C. App. 1972, 298 A. 2d 509).

Double jeopardy

Where trial court was informed when defendant failed to appear for trial that defendant was in jail, was suffering from heroin withdrawal symptoms and was quite ill and defendant might have been unable to attend trial for several days, grant of mistrial was not unreasonable and retrial was not barred by the double jeopardy clause. *M. R. Glover v. United States* (D.C. App. 1973, 301 A. 2d 219).

Entrapment

Evidence including statement of person to police that defendant could probably get some marijuana or probably had some, that when officers entered defendant's

apartment they observed a "roach slip" such as used in smoking marijuana cigarettes and that defendant responded favorably to officers' statement that they wished marijuana was sufficient to defeat defense of entrapment to charge of unlawful possession of marijuana by defendant who claimed he was a mere conduit in the delivery of marijuana to officers who had been introduced to defendant by person who claimed to be a friend of defendant. *United States v. J. L. Tyson* (1972, 470 F.2d 381, 152 U.S. App. D.C. 233; cert. denied 93 S. Ct. 1512, 410 U.S. 985).

Evidence—Admissibility

In narcotics prosecution, trial court committed reversible error in admitting into evidence hearsay rent and utility receipts bearing defendant's name for purpose of showing who was living in apartment where drugs were found. *United States v. S. E. Watkins* (1975, 519 F. 2d 294, 171 U.S. App. D.C. 158).

Where government had stated, in response to motion to suppress written statements made by defendant at the time of his arrest, that defendant did not make any statements at the time of his arrest which government intended to use against him and where neither police report given to defendant nor grand jury and preliminary hearing testimony indicated that defendant made any statements to arresting officers, trial court should have excluded any reference to oral statement made at time of arrest by defendant, that he used narcotics and that he "shot" in his ankle. *United States v. S. J. Lewis* (1975, 511 F. 2d 798, 167 U.S. App. D.C. 232).

Where police officer approached automobile stopped in left lane of road on driver's side to inform driver that she could not make left turn, observed driver smoking colored cigarette, smelled strange odor of cigarette, observed furtive motions, ordered occupants from automobile, and looked in automobile to assure that no weapons were present, vial of marijuana in plain view on floor of automobile was admissible. *United States v. J. A. Burton and J. L. Burton* (D.C. App. 1974, 327 A. 2d 308).

Evidence of defendant's 11-month-old conviction for possession of heroin was admissible in prosecution for possession of marijuana as substantive evidence of defendant's predisposition to commit the offense thereby rebutting his entrapment defense. *United States v. J. L. Tyson* (1972, 470 F. 2d 381, 152 U.S. App. D.C. 233; cert. denied 93 S. Ct. 1512, 410 U.S. 985).

Where issue of defendant's prior involvement with narcotics was raised by him in his direct testimony in prosecution for possession of marijuana, and he attempted to convey to jury an impression of innocence of prior narcotics trafficking, evidence of recent conviction for possession of heroin was admissible to challenge the inference defendant sought to suggest. *Id.*

Where officers, when they arrived to execute search warrant, expected another person to be residing at address, and instead discovered that premises were occupied by defendant, who was not then there, and when defendant arrived he was asked to accompany officers to a bedroom, and there he was confronted with narcotics and paraphernalia and asked if he recognized the items and if they were his, there was no custodial interrogation of kind limited in *Miranda* decision, and inculpatory statements made by defendant were admissible. *J. B. N. Tyler v. United States* (D.C. App. 1972, 298 A. 2d 224).

— Sufficiency

Evidence in prosecution for possession of narcotics was insufficient to show that defendant had constructive possession thereof where such evidence consisted only of showing that defendant was present in apartment where narcotics were found. *United States v. S. E. Watkins* (1975, 519 F. 2d 294, 171 U.S. App. D.C. 158).

Conviction of defendant of unlawful possession of narcotic drugs was supported by evidence that, while one police officer was momentarily distracted while questioning defendant in her apartment, second officer waiting outside saw packet of heroin being thrown from defendant's window. *United States v. M. J. Belt* (1975, 514 F. 2d 837, 169 U.S. App. D.C. 1).

Evidence sustained defendant's conviction for unlawful distribution of marijuana even though the marijuana which he concededly sold to undercover officer was not

necessarily of the species *Cannabis sativa* L., the only species of marijuana which is specifically named in federal statutes and local statutes of the District of Columbia. *United States v. S. A. Walton* (1975, 514 F. 2d 201, 168 U.S. App. D.C. 305).

Evidence that defendant when arrested had bottle "filled to the brim" with greenish weed and that he had twice attempted to scatter and contaminate contents by spilling them on floor sustained conviction for possession of marijuana, although only 16 milligrams remained for use at trial. *C. C. Jones v. United States* (D.C. App. 1974, 318 A. 2d 888).

Record sustained finding that minor defendant, who produced witness who recalled events of day in question and exculpated defendant, was not prejudiced, in offering defense, by delay between sale and arrest, though last two months of delay between sale and arrest was questionably unreasonable. *In the Matter of G. T.* (D.C. App. 1973, 304 A. 2d 865).

— Suppression

Upon motion to suppress evidence obtained without search warrant, although trial court improperly ruled that defendant had burden of establishing that his rights were violated, such error was harmless, where prosecutor made the arresting officer, whom he was apparently about to call for the State, available for examination by defense counsel, who was permitted to treat him as adverse witness, and where prosecutor also turned over for inspection and possible use for impeachment by the defense the arrest reports which would ordinarily not be given to the defense until after direct examination. *R. D. Malcolm v. United States* (D.C. App. 1975, 332 A. 2d 917).

At suppression hearing, defendant was not entitled to search warrant affidavits in which informant provided a "tip" which triggered police action, which affidavits were filed in previous cases. *Id.*

The decision authorizing warrantless search of hotel room in which sawed-off shotgun had been observed did not require court to reverse decision which had suppressed narcotics seized in warrantless search of hotel room in which narcotics had been observed. *United States v. A. J. Costa and V. J. Barnes* (1973, 356 F. Supp. 606; aff'd 479 F. 2d 922, 156 U.S. App. D.C. 200).

Officer who observed defendant, a high school student outside school building, trying to stuff some money into envelope similar to those used in other narcotics transactions at the school and who saw a known narcotics addict approach defendant who started to run when officer reached for the envelope and tore a portion of the envelope from defendant's hand did not have probable cause to arrest defendant at the moment the envelope was seized, and heroin found in the envelope should have been suppressed. *F. L. Waters v. United States* (D.C. App. 1973, 311 A. 2d 835).

Failure of trial court to consider tardy oral motion to suppress evidence did not vitiate conviction where court permitted counsel to develop point respecting validity of seizure and there was no showing that seizure was invalid. *G. F. Thompson v. United States* (D.C. App. 1973, 307 A. 2d 764).

Harmless error

Any error in marijuana possession prosecution in failure to give proffered instruction relating to burden of proving possession of usable quantity of narcotics was harmless where instruction was in some respect lacking factual predicate, counsel vigorously argued theory, and instructions given were marginally adequate. *C. C. Jones v. United States* (D.C. App. 1974, 318 A. 2d 888).

Joinder

Where, although defendants were prosecuted in single proceeding in federal district court both for possession of heroin with intent to distribute in violation of Comprehensive Drug Abuse Prevention and Control Act of 1970 and for possession of heroin in violation of this section, they were convicted and sentenced only under this section, there was no impermissible joinder of judgments. *United States v. G. E. Jones* (1975, 527 F. 2d 817, — U.S. App. D.C. —).

Mistrial

Where defendant's incarceration on other charge, hospitalization and illness due to heroin withdrawal symp-

toms had prevented his attendance at trial, there was manifest necessity which permitted retrial even though trial court failed to consult defense counsel regarding feasibility of a continuance before mistrial was granted in prosecution for unlawful possession of heroin. *M. R. Glover v. United States* (D.C. App. 1973, 301 A. 2d 219).

Defendant was not entitled to claim for first time on appeal that the information concerning defendant's health on which trial court declared mistrial was erroneous and that double jeopardy barred the reprosecution of defendant on possession of heroin charge. *Id.*

Plain error

In prosecution for carrying a dangerous weapon, assaulting a police officer, and unlawful possession of narcotic drug, sustaining as valid Fifth Amendment privilege claimed by defense witness called to corroborate testimony of defendant, who did not claim infringement of his own Fifth Amendment privilege against self-incrimination, was not plain error, on theory that he was denied a fair trial, where there was no pretense the record would support an inference of prosecutorial misconduct or that Government's case was buttressed by the witness' exercise of the privilege against self-incrimination, and where witness was called by defense counsel with full prior knowledge that privilege would be invoked. *R. W. Mack v. United States* (D.C. App. 1973, 310 A. 2d 234).

Possession

Position of dominion or control over narcotics should not be lightly imputed to one found in another's apartment or home; if inference of constructive possession must be made, jury must have before it information about regularity with which person in question occupied place and about his special relationship with owner or renter. *United States v. S. E. Watkins* (1975, 519 F. 2d 294, 171 U.S. App. D.C. 158).

Probable cause

Where informant supplied police officer with detailed information relating to possession of marijuana by defendant and every aspect of such information, including place, time, and physical appearance, was checked and verified by police officer, police officer had probable cause for arrest. *United States v. R. D. Malcolm* (D.C. App. 1975, 331 A. 2d 329).

Actions of marijuana-sniffing dog regularly used at port of entry and found to be consistently reliable furnished probable cause for issuance of warrant for search of footlockers at bus terminal. *United States v. S. M. Fulero* (1974, 498 F. 2d 748, 162 U.S. App. D.C. 206).

Where a concededly reliable informer gave tip based on personal knowledge which described defendant in great detail, and he gave defendant's alias and his present location and before arrest officers were able to corroborate the informant's tip in every detail with the exception of actual possession of narcotics, probable cause was established and narcotic and implement seized from defendant at time of arrest did not need to be suppressed. *R. Banks v. United States* (D.C. App. 1973, 305 A. 2d 256).

Where police officer trained in field of narcotics viewed photographs taken by another officer and was of firm belief that plants depicted in photographs were marijuana plants and on personally observing the yard such officer saw one plant growing and that plants growing in flowerpots in yard as depicted in photographs had been removed to rear of porch and several plants were missing altogether, there was probable cause for issuance of warrant to search both yard and premises. *United States v. M. E. McMillon* (1972, 350 F. Supp. 593).

Officer's observations of defendant, who was standing beside sink in his employer's restroom and appeared startled upon seeing policeman, who had entered in order to use the restroom, of defendant's freezing against the wall and of coin purse located on sink and similar to those in which officer had found narcotics in the past did not constitute probable cause for officer, who admitted that he had no reason to believe a crime was being committed when he looked into coin purse, to arrest defendant prior to the search, and search, which revealed narcotics paraphernalia and heroin, was therefore invalid. *L. D. McWilliams v. United States* (D.C. App. 1972, 298 A. 2d 38).

Prosecution

Factors to be considered on contention of unreasonable delay in prosecution of narcotics charge are: (1) reasonableness of delay, (2) plausibility of prejudice to defendant, and (3) reliability of government's techniques and proof of defendant's identity. *In the Matter of G. T.* (D.C. App. 1973, 304 A. 2d 865).

Right to privacy

Where yard was enclosed by stake fence approximately six feet in height and overgrown with vines and bushes, and police officers who took pictures of marijuana plants growing in yard and on porch of dwelling while standing on porch of adjacent home with owner's permission did not physically intrude into the defendant's premises, there was no violation of defendant's right to privacy. *United States v. M. E. McMillon* (1972, 350 F. Supp. 593).

Fact that officers who, with permission of owner, used adjacent porch to see into yard surrounded by stake fence approximately six feet in height had to stand on their toes, or lean around side of partition, or stand on box did not preclude their observations from being within scope of "plain view" doctrine. *Id.*

Right to remain silent

Unacceptable burden upon defendant's Fifth Amendment privilege to remain silent was imposed by trial court in narcotics prosecution when, after admitting hearsay rent receipts, court stated that defendant would have opportunity to rebut probative value of receipts when she testified. *United States v. S. E. Watkins* (1975, 519 F.2d 294, 171 U.S. App. D.C. 158).

Search and seizure

Fact that accused was accompanied by woman when he walked up alley at night in high crime area of city and moved his right arm to left side of his coat upon hearing unidentified person yell "police officers" did not constitute reasonable grounds for initial seizure of accused by police officers, and thus any subsequent search of accused flowing from unreasonable seizure cannot be sustained. *A. E. Curtis v. United States* (D.C. App. 1975, 349 A. 2d 469).

Where police acted upon information received from an informant, whose reliability had been established by prior contacts with the police and since information furnished by him proved accurate, describing in detail the activities of the defendant, his physical description, his present location, and that narcotics were contained in a cigarette package in his possession, the information supplied by the informant was sufficient to establish probable cause to apprehend the defendant and seize the contraband heroin and fact that defendant was not formally placed under arrest until contraband heroin was seized from his pocket is not material. *E. Smith v. United States* (D.C. App. 1975, 348 A. 2d 891).

Police who came to defendant's house with arrest warrant for defendant's brother, who was charged with a violent crime, were not required to accept as true defendant's statement that brother was not home and were entitled to search the home for the suspect and to seize marijuana which was in plain view within the home. *V. S. Hawkins v. United States* (D.C. App. 1974, 319 A. 2d 328; cert. denied 95 S. Ct. 233, 419 U.S. 969).

Where hotel registration slip showed registration at 1:55 a.m., April 30th, at daily rate of \$23 plus tax, receipt dated April 30th, showed occupant of room was being charged for two days, hotel had not removed occupant's belongings at time search was made after normal check-out time, possession of room had not reverted to hotel and was still vested in registered occupant and hotel manager could not validly consent to warrantless search of room. *United States v. A. J. Costa and V. J. Barnes* (1973, 356 F. Supp. 606; aff'd 479 F. 2d 922, 156 U.S. App. D.C. 200).

Following arrest of defendant under warrant for operating motor vehicle after revocation of operator's permit, police officer was authorized to conduct "full field search" of defendant, remove envelope from pocket inside coat and open it to determine if it contained narcotics. *United States v. K. C. Simmons* (D.C. App. 1973, 302 A. 2d 728).

Where police officer who had heard radio broadcast stating that three subjects were using narcotics in automobile parked at rear of warehouse went to the location and saw

three persons seated in automobile matching description which had been broadcast, officer had justification for further affirmative action and his determination to identify himself as police officer and open the car's door simultaneously, while directing the occupants to get out, was permissible, and upon observing bottle-top cooker and full syringe on floor of the car, seizure of the evidence and arrest of the subjects became appropriate and there was no violation of constitutional right to be protected against unreasonable search and seizure. *United States v. E. Mitchell* (D.C. App. 1973, 299 A. 2d 540).

Police officer who, while walking his beat in an area considered high in narcotic traffic, noticed defendant and two other young men standing in the shadows of a building, who observed that their hands were "passing and changing" among them, who crossed the street to investigate whereupon defendant began to walk away rapidly, who called out "I would like to talk with you a minute," in response to which defendant, within the earshot of pedestrians, shouted a four-letter expletive and ran, had probable cause to arrest defendant for disorderly conduct; thus, the ensuing search for weapons incident to the arrest, which search yielded a bag of heroin, was likewise lawful. *W. Von Sleichter v. United States* (1972, 472 F. 2d 1244, 153 U.S. App. D.C. 169; aff'g 267 A. 2d 336; cert. denied 93 S.Ct. 555, 409 U.S. 1063).

Where on executing warrant authorizing search of after-hours club or bar for a "gaming table and other related gambling paraphernalia," police officers knocked twice and announced they were police officers with a search warrant, after hearing someone run away from the door, officers waited approximately 30 seconds and then forced door open and from previous observations police had probable cause to believe that extensive gambling was being carried on, police had sufficient grounds to search the individuals present and tinfoil packet found on in-depth search of an occupant was properly seized and would be admissible in prosecution for possession of heroin; officers had reasonable cause to believe that occupants possessed, concealed and were about to remove or destroy evidence for which they had a search warrant. *United States v. W. Miller* (D.C. App. 1972, 298 A. 2d 34).

Where person who gave consent to search apartment was lawful cotenant who had right to be present in at least the jointly shared areas of the apartment, defendant by sharing his apartment ran risk that cotenant would consent to search of common areas of that abode and marijuana found in the apartment was admissible. *B. F. Villine v. United States* (D.C. App. 1972, 297 A. 2d 785).

Where police officer was told by another that defendant, whom officer had questioned, had a syringe under wig, officer's momentary stopping of defendant, inquiry about wig, and request to defendant to remove her hat were reasonable, and defendant's denial of wearing a wig and its obvious presence furnished independent observation and corroboration which gave rise to a reasonable basis to arrest defendant and seize contents of her hand, which she had removed from beneath wig and which contained syringe and a bag of methadone, and to seize tinfoil pack, which apparently contained heroin, from starch box from which defendant began to eat at police station. *United States v. S. P. Oliver* (D.C. App. 1972, 297 A. 2d 778).

Sentence

Imposition of concurrent five-year sentences on conviction of receiving, concealing and facilitating concealment of narcotic drugs, in violation of federal law, and of knowingly possessing narcotic drugs, in violation of local law, did not constitute cruel and unusual punishment; however, sentence was to be vacated and case, which grew out of indictment filed in September of 1970, was to be remanded to permit full consideration of disposition under Narcotic Addict Rehabilitation Act. *United States v. M. A. Hunter* (1973, 485 F. 2d 1035, 158 U.S. App. D.C. 256).

§ 33-405. Use of official written orders.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-416a. Vagrancy—Narcotic drug user—Penalties—Conditions imposed.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-422. Enforcement—Employees of Board of Pharmacy—Salaries—Cost of forms.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-423. Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Standing

Challenge to punishment provision for unlawful possession of marijuana as constituting cruel and unusual punishment was premature where no defendant had been convicted or sentenced for possession; defendants, who had not been tried on the information, had no standing to argue that the maximum penalties constituted cruel and unusual punishment. *United States v. I. D. Thorne et ano.* (D.C. App. 1974, 325 A.2d 764).

§ 33-424. Effect of acquittal or conviction under Federal narcotic laws.

NOTES TO DECISIONS

Appeal and error

Where, although defendants in joint drug prosecution failed in trial court to raise contention that joinder of both federal and District of Columbia charges deprived them of equal protection of laws, such issue presented sole question of law which would not be materially illuminated by development of further record in trial court, Court of Appeals would consider such issue despite its being raised for first time on appeal. *United States v. G. E. Jones* (1975, 527 F. 2d 817, — U.S. App. D.C. —).

Chapter 5.—MEATS AND MEAT PRODUCTS

§ 33-502. Same—District of Columbia Council to make regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—REGULATION AND CONTROL OF CERTAIN DRUGS OTHER THAN NARCOTICS

§ 33-701. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-702. Prohibited acts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Abuse of discretion

Trial court did not abuse its discretion in failing to request presentence report, in prosecution for possession of narcotics paraphernalia and possession of dangerous drug, where information developed concerning defendant was sufficient so that judge could impose appropriate sentence without use of such report. *C. E. Rosser v. United States* (D.C. App. 1974, 313 A. 2d 876).

Evidence—Sufficiency

In prosecution for possession of narcotics paraphernalia and possession of dangerous drug, desoxyn, government established unbroken chain of custody as matter of reasonable probability, in view of testimony showing that envelopes had not been tampered with and sufficiently explaining any reason for delay in delivery. *C. E. Rosser v. United States* (D.C. App. 1974, 313 A. 2d 876).

— Suppression

Where although trial court observed that evidence, i.e., cigarette package-sized item wrapped in white handkerchief, was "handed" to officer and that defendant succeeded in divesting himself of possession by giving item to female, trial court did not rule on issue of consent to search, remand for that purpose was required in view of fact that officers did not otherwise have probable cause to arrest defendant and seize item. *R. L. Vicks v. United States* (D.C. App. 1973, 310 A. 2d 247).

Instructions

Where defendant was charged with possession of dangerous drug, based upon finding in his jacket a lady's change purse containing a pill, defendant contended that just prior to his apprehension, he had met an old girl friend who had given him purse and explained that she was going out with new boyfriend who always took money from her, so that if she were to testify, her testimony would be self-incriminating and defendant had been unable to subpoena her or otherwise secure her voluntary appearance in case, she was not peculiarly within defendant's power to produce and adverse missing witness instruction should not have been given. *P. A. Carver v. United States* (D.C. App. 1973, 312 A. 2d 773.)

Probable cause

Where police officers proceeding in unmarked police car in high narcotics area observed one of several men hand defendant some money, on observing officers defendant

began to walk away and then attempted to hand female a white handkerchief containing item similar in size to package of cigarettes, there was no probable cause to arrest defendant and seize handkerchief; there was no two-way exchange of money for an item and desoxyn, which was found in handkerchief, was not in plain view. *R. L. Vicks v. United States* (D.C. App. 1973, 310 A. 2d 247).

Search and seizure

Where occupants of automobile had not been arrested, officers had no probable cause or belief that automobile contained contraband, contents of medicine vial on front seat of car were not in plain view, and officer had no probable cause to believe that vial, which bore an old prescription label, contained contraband or in any way endangered the officer's safety, officer had no authority to seize the vial and examine its contents, though the vial was in plain view. *R. G. Christmas v. United States* (D.C. App. 1974, 314 A. 2d 473).

§ 33-703. Drugs exempted.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-706. Inspection.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-707. Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 33-708. Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 34.—HOTELS AND LODGING-HOUSES

Chapter 1.—RIGHTS AND LIABILITIES

§ 34—107. Lien of hotels, motels, and innkeepers—Retention of property of guest or patron—Satisfaction of lien by public sale—Notice—Application of proceeds.

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13—336.

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§ 34—108. Sale by hotels, motels, and innkeepers of unclaimed property—Notice—Application of proceeds.

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13—336.

TITLE 35.—INSURANCE

Chap.	Sec.
18. Insurance Guaranty Association.....	35-1801
19. Holding Company System.....	35-1901

Chapter 1.—INSURANCE DEPARTMENT—GENERAL PROVISIONS

§ 35-101. Department of Insurance created—Superintendent of Insurance—Subject to supervision of Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-102. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Authority of District Council

Fact that no previous cases upheld the municipality's exercise of police power to regulate insurance did not compel conclusion that the District Council was without such power. *Firemen's Insurance Company of Washington, D.C. v. W. E. Washington et al.* (1973, 483 F. 2d 1323, 157 U.S. App. D.C. 320).

District of Columbia regulation generally precluding the insurance company from considering geographic location in determining whether to insure or continue to insure auto, fire and casualty risks in district and prohibiting cancellation of those policies for other than specified conditions do not conflict with specific provisions of the District of Columbia Insurance Code or the Automobile Insurance Plan and were not preempted thereby; with respect to basic property insurance regulation prohibiting geographic discrimination did conflict with and was preempted by the District of Columbia Insurance Placement Act. *Id.*

§ 35-106. Superintendent to make annual report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF INSURANCE

SUBCHAPTER I.—GENERAL PROVISIONS

§ 35-201. Life and fire insurance companies to maintain reinsurance reserves—Suspension of license upon impairment of capital stock—Penalty for acting for unlicensed company—Superintendent may make examination to determine impairment in capital, or insolvency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-202. Health, accident, and life insurance companies defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to Commissioner—Fraternal beneficial and certain other organizations exempt.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-203. Copy of application to be delivered with policy—Statements in application as defense.

NOTES TO DECISIONS

Medical authorization

In light of fact that medical authorization form signed by insured did not contain or call for any information, failure to attach the form to life policy was immaterial and did not bring into play bar of statute requiring an insurance company to include with issued policy a copy of application made by insured, or preclude insurer from defending on ground of insured's failure to disclose his medical history. *L. Blair v. The Prudential Insurance Co. of America* (1972, 472 F. 2d 1356, 153 U.S. App. D.C. 281).

Purpose

This section requiring an insurance company to include with issued policy a copy of application made by insured was enacted for protection of insured, not the insurance company. *L. Blair v. The Prudential Insurance Co. of America* (1972, 472 F. 2d 1356, 153 U.S. App. D.C. 281).

Recovery

Even though application for life insurance did not accurately reveal decedent's medical history, and even though there was no showing of fraud and false recording by insurer's agent, named beneficiary was entitled to recover on policy, in view of facts that application was filled out by agent in accordance with standard company practice, not by insured, that application form was highly technical and difficult to understand, that deceased did not study responses with any care but relied

on agent before he signed, that deceased revealed name and address of his doctor and insurer made no inquiry of the doctor, and that application form attached to policy when delivered was so reduced in size as to be practically illegible. *L. Blair v. Prudential Insurance Company* (1973, 366 F. Supp. 859; rev'd and rem'd 506 F. 2d 1321, 165 U.S. App. D.C. 282).

§ 35-204. Principal office to be in District of Columbia—Keeping and removing of records—Reincorporation of companies chartered by special acts—Penalties—Prosecutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—DOMESTIC STOCK INSURANCE COMPANIES

§ 35-222. Rules and regulations—Revocation or suspension of certificate—Notice and hearing—Penalties—Exemption of certain companies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-223. Registration requirements of beneficial owners, directors, etc.—Sales restriction—Definition—Exemption—Rules and regulations—Penalty—Effective date of section.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-224. Preservation of authority—Delegation of functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—LIFE INSURANCE—DEFINITIONS

§ 35-302. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1901.

Chapter 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

§ 35-401. Insurance department—Superintendent of Insurance — Oath — Bond — Assistants—Seal—Sealed instruments as evidence—Annual report—Attendance at conventions—Visits—Expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-403. Refunds of excess in fees, charges, or taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-407. Annual statement—Verification—Failure to make.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-414. False statements in application for insurance.

NOTES TO DECISIONS

Construction

Provision of this section stating that falsity of a statement in application for any policy shall not bar right to recovery thereunder unless such false statement was made with intent to deceive or unless it materially affected either acceptance of risk or hazard assumed by insurer is without ambiguity, and did not require life insurer to prove that applicant's false statement, which was conceded to materially affect the risk assumed, was made with intent to deceive. *M. W. Hill, Administratrix etc. v. The Prudential Insurance Company of America* (D.C. App. 1974, 315 A.2d 146).

Misrepresentation—Intent to deceive

Life policy, which provided that statements made in an application for insurance "shall be deemed representations and not warranties," did not require insurer to show that applicant's false statement, which was conceded to materially affect the risk assumed, was made with intent to deceive. *M. W. Hill, Administratrix etc. v. The Prudential Insurance Company of America* (D.C. App. 1974, 315 A.2d 146).

— Material

Proof that an application for insurance contains a false statement which materially affects acceptance of risk or hazard assumed is sufficient to defeat a claim under the policy. *M. W. Hill, Administratrix etc. v. The Prudential Insurance Company of America* (D.C. App. 1974, 315 A.2d 146).

Notice to insurer

Under District of Columbia law, insurer could not successfully interpose defense of misstatement of, or omission to state, material medical facts in application form, where applicant, at request of insurer's agent, signed application form in blank, applicant and his wife orally gave truthful and full answers to questions on application form as they were propounded by the agent, the agent himself recorded one or more material misstatements of fact on the application form or omitted to record material information, and neither the applicant nor his wife knew of the agent's entry on the application form of any such

misstatement or of the agent's omission of any material information, or read the application form either before its submission to insurer, or after policy was issued and returned to insured with application form in reduced form attached to and made part of the issued policy. *L. Blair v. The Prudential Insurance Co. of America* (1972, 472 F. 2d 1356, 153 U.S. App. D.C. 281).

Recovery

Even though application for life insurance did not accurately reveal decedent's medical history, and even though there was no showing of fraud and false recording by insurer's agent, named beneficiary was entitled to recover on policy, in view of facts that application was filled out by agent in accordance with standard company practice, not by insured, that application form was highly technical and difficult to understand, that deceased did not study responses with any care but relied on agent before he signed, that deceased revealed name and address of his doctor and insurer made no inquiry of the doctor, and that application form attached to policy when delivered was so reduced in size as to be practically illegible. *L. Blair v. Prudential Insurance Company* (1973, 366 F. Supp. 859; rev'd and rem'd 506 F. 2d 1321, 165 U.S. App. D.C. 282).

§ 35-416. Custody of general deposits—Collection of income—Substitution of securities—Required securities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-418. Examinations—Reports—Verification—Hearing upon—Publication—Expense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1906.

§ 35-419. Superintendent may take possession of property of company and conduct its business—Conditions precedent—Procedure—Injunction—Resumption of possession by company—Order for liquidation—Appointment of deputies—Expense of liquidation—Bond—Annual report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-425. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-428. Brokers—License—Application—Contents—Person vouched for—Examination—Issuance—Effect of revocation—Appeal from refusal to issue—Renewal annually—Penalty for violation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-432. Appeal from superintendent to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—DOMESTIC LIFE COMPANIES

§ 35-508. Capital-stock requirements.

(a) A domestic capital-stock company organized under chapters 3-8 of this title shall have a paid-up capital stock of not less than \$1,000,000. Each domestic capital-stock company organized under chapters 3-8 of this title, in addition to the paid-up capital stock shall have a surplus paid up equal to at least 50 per centum of such capital stock. Each domestic mutual company organized or doing business under chapters 3-8 of this title shall at all times have a surplus as defined by chapters 3-8 of this title of not less than \$1,500,000.

(b) No company shall be exempt from the provisions of this section by reason of its having been incorporated in the District or elsewhere prior to the effective date of this subsection or subsequent amendment, except that in the case of companies authorized in the District of Columbia on (date of passage) and continuously authorized thereafter without any increase or broadening of authority, the minimum capital required of a stock company, or the minimum surplus required of a mutual company shall not be increased by this section. (June 19, 1934, 48 Stat. 1145, ch. 672, Ch. III, § 8; May 4, 1950, 64 Stat. 104, ch. 157, § 4; Aug. 31, 1964, 78 Stat. 764, Pub. L. 88-556, § 1; Aug. 14, 1973, Pub. L. 93-89, title II, § 201(1), (2), 87 Stat. 303.)

AMENDMENT

1973—Section 201(1)(2) of Act Aug. 14, 1973, Pub. L. 93-89, amended section as follows:

- (1) In subsec. (a), by substituting "\$1,000,000" and "\$1,500,000" for "\$200,000" and "\$150,000", respectively.
- (2) In subsec. (b), by inserting "or subsequent amendment" immediately after "subsection"; and by inserting "or the minimum surplus required of a mutual company" immediately after "stock company".

EFFECTIVE DATE OF 1973 AMENDMENT

Section 202 of title II of Act Aug. 14, 1973, Pub. L. 93-89, provided: "The amendment made by this title [amending §§ 35-508 and 35-535] shall take effect thirty days after the date of enactment of this Act."

§ 35-519. Conversion of a stock life company into a mutual life company—Plan for acquisition of capital stock—Conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-535. Investment of funds of domestic companies.

A domestic company shall invest its funds only in—

* * * *

(10) (a) Common stocks of any solvent corporation (other than its own) created under the laws of the United States, or of any State thereof, or the District of Columbia, or the Dominion of Canada, or any Province thereof, which shall have paid common dividends in cash for not less than five years next preceding the purchase of such stocks, and where the bonds and other evidences of indebtedness, if any, and the preferred stock, if any, of such corporation are eligible as investments under the provisions of subsections (7) and (9), respectively, of this section, and where the total investment in the common stock of any one corporation does not exceed 1 per centum of the investing company's admitted assets.

(b) In addition to the investments authorized in paragraph (10)(a), common stocks of any insurance company (other than as prohibited in section 35-540) created under the laws of the United States, or by any State thereof, or the District of Columbia: *Provided, however,* That stocks may be acquired under this paragraph (10) (b) only (i) with the intention of ultimately acquiring ownership or control of the issuing corporation as an affiliate or a subsidiary, (ii) if such acquisition will not cause the acquiring company's aggregate cost of investments under this paragraph to exceed, in the case of a capital stock company, the amount of capital, surplus, and contingency reserves in excess of \$1,500,000, or, in the case of a mutual company, the amount of surplus and contingency reserves in excess of \$1,500,000 and (iii) after the Superintendent of Insurance of the District of Columbia has been furnished with such information as he may require and has given to the acquiring company his written approval of the proposed acquisition stating his opinion that it will not substantially lessen competition, will not tend to create a monopoly in any line of insurance, and will not impair the financial stability of the acquiring company.

* * * *

(15) Any domestic life insurance company may also lend or invest its funds, to an extent that the cost of such investments shall not exceed in the aggregate the lesser of (i) 5 per centum of its total admitted assets, or (ii) in the case of a capital stock company, the amount of capital, surplus, and contingency reserves in excess of \$1,500,000 or, in the case of a mutual company, the amount of surplus and contingency reserves in excess of \$1,500,000, in loans or investments (other than common stocks of insurance companies) not otherwise permitted under this section: *Provided, however,* That no company shall invest in excess of 1 per centum of its admitted assets in any one such loan or investment. The company shall keep a separate record of all loans and investments made under this subsection. In the event that, subsequently to being made under the provisions of this subsection, a loan or investment is determined to have become qualified under some

other part of this section, the company may consider such loan or investment as being held under the applicable provision and such loan or investment shall no longer be considered as having been made under this subsection.

* * * *

(As amended Aug. 14, 1973, Pub. L. 93-89, title II, § 201(3), (4), 87 Stat. 303.)

AMENDMENT

1973—Section 201(3) (4) of Act Aug. 14, 1973, Pub. L. 93-89, amended section as follows:

- (1) In subsec. (10) (b) (ii), by substituting "\$1,500,000" for "\$300,000" and "\$150,000".
- (2) In subsec. (15) (ii), by substituting "\$1,500,000" for "\$300,000" and "\$150,000".

EFFECTIVE DATE OF 1973 AMENDMENT

See note under § 35-508.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-510, 35-541, 35-1902.

§ 35-541. Variable contracts—Separate accounts—Assets of accounts to equal obligations for variable payments—Issuance by foreign companies—Standards of qualification—Reports—Regulations—Investment limitations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2401, 35-1902.

Chapter 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

§ 35-701. Superintendent to value policies—Legal standard of valuation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-705b. Standard nonforfeiture law.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-710. Group life insurance.

No policy of group life insurance shall be delivered in the District unless it conforms to one of the following descriptions:

- (1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

* * * *

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides term insurance on any employee which together with any other term insurance under any group life-insurance policy or policies issued to the employers or any of them or to the trustees of a fund established in whole or in part by the employers or any of them exceeds \$30,000 unless 300 per centum of the annual compensation of a covered employee, exceeds \$30,000, in which event all such insurance shall not exceed \$100,000, or 300 per centum of such annual compensation, whichever is less.

(3) A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union. No policy may be issued which provides term insurance on any union member which together with any other term insurance under any group life insurance policies exceeds \$30,000 unless 300 per centum of the annual compensation of a covered union member exceeds \$30,000, in which event all such insurance shall not exceed \$100,000, or 300 per centum of such annual compensation, whichever is less.

(4) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life-insurance policy or policies issued to the employers, or any of them, or to the trustees of a fund established in whole or in part by the employers, or any of them, exceeds \$30,000 unless 300 per centum of the annual compensation of a covered person exceeds \$30,000, in which event all such insurance shall not exceed \$100,000, or 300 per centum of such annual compensation, whichever is less.

(6) A policy issued to an association whose eligible members have the same profession, trade, or occupation which has been organized and is maintained for purposes other than that of obtaining insurance,

which shall be deemed the policyholder, to insure members, or employees of members, of such association for the benefit of persons other than the association, or any of its officials, representatives, or agents, subject to the following requirements:

(d) The amounts of insurance under the policy must be based on some plan precluding individual selection either by the members or employees, or by the association. No policy may be issued which provides term insurance on any association member or employee which, together with any other term insurance under any group life insurance policy or policies, exceeds \$30,000, unless 300 per centum of the annual compensation of such person exceeds \$30,000, in which event all such term insurance shall not exceed \$100,000, or 300 per centum of such annual compensation, whichever is less.

(9) A policy issued to a duly organized national veterans' organization which has been organized and is maintained for purposes other than that of obtaining insurance, which shall be deemed the policyholder, to insure members of such organization for the benefit of persons other than the organization, or any of its officials, representatives, or agents, subject to the following requirements:

(d) The amounts of insurance under the policy must be based on some plan precluding individual selection either by the members, or by the organization. No policy may be issued which provides term insurance on any organization member which, together with any other term insurance under any group life insurance policy or policies, exceeds \$30,000, unless 300 per centum of the annual compensation of such person exceeds \$30,000, in which event all such term insurance shall not exceed \$100,000, or 300 per centum of such annual compensation, whichever is less.

(As amended Aug. 14, 1973, Pub. L. 93-89, title III, § 301, 87 Stat. 304.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Section 301 of Act Aug. 14, 1973, Pub. L. 93-89, amended subsecs. (1)(d), (3)(d), (4)(d), (6)(d), and (9)(d) as follows: (1) by striking out "\$20,000" each place it appeared and inserting in lieu thereof "\$30,000"; (2) by striking out "\$40,000" each place it appeared and inserting in lieu thereof "\$100,000"; and (3) by striking out "150" each place it appeared and inserting in lieu thereof "300".

§ 35-711. Standard provisions for policies of group life insurance.

No policy of group life insurance shall be delivered in the District unless it contains in substance the following provisions, or provisions which in the opinion of the superintendent are more favorable to the persons insured, or at least as favorable to the

persons insured and more favorable to the policyholder:

Provided, however, (a) That provisions (6) to (10), inclusive, shall not apply to policies issued to a creditor to insure debtors of such creditor, or to policies issued pursuant to section 35-710(8); (b) that the standard provisions required for individual life-insurance policies shall not apply to group life-insurance policies; (c) that if the group life-insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the superintendent is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life-insurance policies contain the same nonforfeiture provisions as are required for individual life-insurance policies; and (d) that subject to the terms of the policy any person insured under a group life insurance contract, whether issued before or after August 14, 1973, may make to any person, other than his employer, an absolute or collateral assignment of any or all the rights and benefits conferred on him by any provision of such policy or by law, including specifically, but not by way of limitation, any right to designate a beneficiary or beneficiaries thereunder and any right to have an individual policy issued upon termination either of employment or of said policy of group life insurance, but nothing herein shall be construed to have prohibited an insured from making an assignment of all or any part of his rights and privileges under the policy before August 14, 1973, and, subject to the terms of the policy, an assignment by an insured before or after August 14, 1973, is valid for the purposes of vesting in the assignee all rights and privileges so assigned, but without prejudice to the insurer on account of any payment it may make or individual policy it may issue prior to receipt of notice of the assignment:

* * * * *

(As amended Aug. 14, 1973, Pub. L. 93-89, title III, § 302, 87 Stat. 304.)

CODIFICATION

In clause (d), "August 14, 1973" has been substituted for "the effective date of this clause".

AMENDMENT

1973—Section 302 of Act Aug. 14, 1973, Pub. L. 93-89, amended section by (1) striking out "and" at the end of clause (b), (2) striking out the colon at the end of clause (c) and inserting a semicolon in lieu thereof, and (3) inserting immediately thereafter a new clause (d).

§ 35-712. Individual Accident and Sickness Policy Provisions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 9.—FRATERNAL BENEFIT ASSOCIATIONS

§ 35-914. Neglect to report—Effect—Injunction—Penalty for violating injunction.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 13.—FIRE, CASUALTY, AND MARINE INSURANCE

SUBCHAPTER I.—FIRE, CASUALTY, AND MARINE INSURANCE, GENERALLY

§ 35-1303. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1401, 35-1901.

§ 35-1304. Records of Insurance Department—Power to make rules.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1313. Examinations—Production of books and papers—Expenses—False statements, reports, or entries—Penalties—Foreign or alien companies, acceptance of examinations made by other authorities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1303, 35-1906.

§ 35-1316. Capital and surplus, minimum requirements.

Every stock company authorized to do business in the District shall have and shall at all times maintain a paid-up capital stock of not less than \$300,000, and a surplus of not less than \$300,000. Every domestic mutual company and every domestic reciprocal company shall have and shall at all times maintain a surplus of not less than \$300,000 and every foreign or alien mutual company and every foreign or alien reciprocal company shall have and shall at all times maintain a surplus of not less than \$400,000. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, Ch. II, § 13; Apr. 16, 1966, 80 Stat. 121, Pub. L. 89-399, § 1(b); Aug. 14, 1973, Pub. L. 93-89, title IV, § 401, 87 Stat. 304.)

AMENDMENT

1973—Section 401 of Act Aug. 14, 1973, Pub. L. 93-89, amended section as follows:

(1) In the first sentence, by striking out "\$150,000" wherever it appeared and inserting "\$300,000" in lieu thereof; and by striking out ", except that every domestic stock company authorized to do a fidelity or surety business in the District shall have and shall at all times maintain a paid-up capital stock of not less than \$500,000, and a surplus of not less than \$250,000".

(2) In the second sentence, by striking out "\$150,000" and "\$200,000" and inserting "\$300,000" and "\$400,000", respectively, in lieu thereof.

§ 35-1317. Existing companies, application of act—Capital and surplus requirements.

No company shall be exempt from the provisions of this subsection by reason of its having been incorporated in the District or elsewhere prior to the effective date of this subsection, except that, in the case of companies authorized in the District on October 9, 1940, and continuously thereafter without any increase of authority, the minimum capital and surplus required of a stock company, and the minimum surplus required of a mutual or reciprocal company, or of a Lloyd's organization by the laws of the District heretofore applicable shall not be increased by this subsection, and provided also that in the case of such continuously authorized companies the provisions of section 35-1328 relating to the names of companies, and the provisions of section 35-1329 relating to the amount of surplus necessary to the issuance of policies having no provision for contingent liability, shall not be applicable. (Oct. 9, 1940, 54 Stat. 1070, ch. 792, Ch. II, § 14; Aug. 14, 1973, Pub. L. 93-89, title IV, § 401, 87 Stat. 304.)

REFERENCE IN TEXT

"Effective date of this subsection", referred to in the text, probably means the effective date of act Oct. 9, 1940. See Effective Date note post.

AMENDMENT

1973—Section 401 of Act Aug. 14, 1973, Pub. L. 93-89, amended section by striking out "chapter" wherever it appeared and inserting "subsection" in lieu thereof, and by striking out "authorized" immediately after "continuously".

EFFECTIVE DATE

Chapter effective 30 days after Oct. 9, 1940, see section 48 of act Oct. 9, 1940, set out as a note under section 35-1301.

§ 35-1321. Investments permitted, domestic companies—Real estate, insurance on improvements required—Real estate required to be unencumbered, "encumbrances" defined—Stock and bonds, investments may not be made when dividends or interest have not been paid—Foreign investments—Approval of directors or supervising committee—Joint investments forbidden.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1902.

§ 35-1327. Process, service upon foreign or alien companies by service on Superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1326.

§ 35-1329. Premiums of mutual companies—Maximum required to be stated—Contingent premiums.

The maximum premium shall be expressed in the policy of a mutual company, and it may be solely a cash premium, or may be a cash premium and an additional contingent premium, which contingent premium shall be not less than the cash premium, but no mutual company, except as otherwise provided in section 35-1317, shall issue any policy for a cash premium without an additional contingent premium until and unless it possesses a surplus of not less than \$600,000. (Oct. 9, 1940, 54 Stat. 1076, ch. 792, Ch. II, § 25; Aug. 14, 1973, Pub. L. 93-89, title IV, § 401, 87 Stat. 305.)

AMENDMENT

1973—Section 402 of Act Aug. 14, 1973, Pub. L. 93-89, substituted "\$600,000" for "\$300,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1317.

§ 35-1334. Agents and brokers—Policies to be executed by licensed and authorized agents—All agreements contained in policy—Rebates prohibited—List of agents to be filed—Payment of premium to broker—Soliciting agent may not sign policy—Life, title, and ocean marine agents excepted.

NOTES TO DECISIONS

Agency relationship

Where property owner did not respond to insurance broker's communications offering to place fire insurance, or otherwise give any indication of intention to accept offer or to again employ broker as owner's agent for such purpose, there was, at time of subsequent telephone conversation, no agency relationship between owner and broker. *J. Gallun et al. v. The McLaughlin Company et ano.* (D.C. App. 1974, 321 A.2d 216).

When broker procured insurance, agency relationship was terminated and broker owed owner no further duty in respect to such insurance until another agency relationship was created. *Id.*

§ 35-1348. Appeal from Superintendent to Commissioner—Time for—Hearing on appeal—Effect of Commissioner's decision.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—INSURANCE PREMIUM FINANCE COMPANIES

§ 35-1365. Revocation and suspension of licenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1367. Power to make rules.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 14.—REGULATION OF FIRE INSURANCE RATES

§ 35-1403. Adjustment of rates—Powers and duties of Superintendent—Removal of discriminations—Appeal from Superintendent's rulings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1404. Organization of rating bureau—Membership—Powers and duties—Apportionment of expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—REGULATION OF CASUALTY AND OTHER INSURANCE RATES

§ 35-1503. Making of rates.

NOTES TO DECISIONS

Geographic discrimination

Fact that no previous cases upheld the municipality's exercise of police power to regulate insurance did not compel conclusion that the District Council was without such power. *Firemen's Insurance Company of Washington, D.C. v. W. E. Washington et al.* (1973, 483 F. 2d 1323, 157 U.S. App. D.C. 320).

District of Columbia regulation generally precluding the insurance company from considering geographic location in determining whether to insure or continue to insure auto, fire and casualty risks in district and prohibiting cancellation of those policies for other than specified conditions do not conflict with specific provisions of the District of Columbia Insurance Code or the Automobile Insurance Plan and were not preempted thereby; with respect to basic property insurance regulation prohibiting geographic discrimination did conflict with and was preempted by the District of Columbia Insurance Placement Act. *Id.*

§ 35-1505. Cooperative and concerted action authorized.

NOTES TO DECISIONS

Geographic discrimination

Fact that no previous cases upheld the municipality's exercise of police power to regulate insurance did not compel conclusion that the District Council was without such power. *Firemen's Insurance Company of Washington, D.C. v. W. E. Washington et al.* (1973, 483 F. 2d 1323, 157 U.S. App. D.C. 320).

District of Columbia regulation generally precluding the insurance company from considering geographic location in determining whether to insure or continue to insure auto, fire and casualty risks in district and prohibiting cancellation of those policies for other than specified conditions do not conflict with specific provisions of the District of Columbia Insurance Code or the Automobile Insurance Plan and were not preempted thereby; with respect to basic property insurance regulation prohibiting geographic discrimination did conflict with and was preempted by the District of Columbia Insurance Placement Act. *Id.*

§ 35-1508. Authority and duty of Superintendent.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 16.—CREDIT LIFE, ACCIDENT, AND HEALTH INSURANCE

§ 35-1602. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1612. Judicial review.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 17.—INSURANCE PLACEMENT

§ 35-1702. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1703. Industry placement facility.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1704. Fair access to insurance requirements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Authority of District Council

Fact that no previous cases upheld the municipality's exercise of police power to regulate insurance did not compel conclusion that the District Council was without such power. *Firemen's Insurance Company of Washington, D.C. v. W. E. Washington et al.* (1973, 483 F. 2d 1323, 157 U.S. App. D.C. 320).

District of Columbia regulation generally precluding the insurance company from considering geographic location in determining whether to insure or continue to insure auto, fire and casualty risks in district and prohibiting cancellation of those policies for other than specified conditions do not conflict with specific provisions of the District of Columbia Insurance Code or the Automobile Insurance Plan and were not preempted thereby; with respect to basic property insurance regulation prohibiting geographic discrimination did conflict with and was preempted by the District of Columbia Insurance Placement Act. *Id.*

§ 35-1705. Joint Underwriting Association.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1706. Examination by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1708. Annual reports by Joint Underwriting Association.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1709. Appeals.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1710. Reimbursement for reinsurance provided under National Insurance Development Program.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1711. Delegation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 18.—INSURANCE GUARANTY ASSOCIATION

Sec.

- 35-1801. Declaration of purpose.
- 35-1802. Scope of chapter.
- 35-1803. Definitions.
- 35-1804. Creation of the Association.
- 35-1805. Board of directors.
- 35-1806. Powers and duties of the Association.
- 35-1807. Plan of operation—Notice of claims.
- 35-1808. Powers and duties of the Mayor.
- 35-1809. Effect of paid claims.
- 35-1810. Nonduplication of recovery.
- 35-1811. Prevention of insolvencies.
- 35-1812. Examination of the Association.
- 35-1813. Tax exemption.
- 35-1814. Recognition of assessments in rates.
- 35-1815. Immunity.
- 35-1816. Stay of proceedings—Reopening of default judgments.
- 35-1817. Termination—Distribution of account funds.

§ 35-1801. Declaration of purpose.

The purpose of this chapter is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to

assess the cost of such protection among insurers. (Aug. 14, 1973, Pub. L. 93-89, title I, § 102, 87 Stat. 297.)

SHORT TITLE

The first section of Act Aug. 14, 1973, Pub. L. 93-89, provided: "That this Act [enacting this chapter and amending §§ 1-804a, 1-805, 35-508, 35-535, 35-710, 35-711, 35-1316, 35-1317, 35-1329] may be cited as the 'District of Columbia Insurance Act'."

Section 101 of title I of the same Act provided: "This title [enacting this chapter] shall be known and may be cited as the 'District of Columbia Insurance Guaranty Association Act'."

§ 35-1802. Scope of chapter.

This chapter shall apply to all kinds of direct insurance, except life, title, disability, and mortgage guaranty insurance. (Aug. 14, 1973, Pub. L. 93-89, title I, § 103, 87 Stat. 297.)

§ 35-1803. Definitions.

As used in this chapter—

(1) The term "Mayor" means the Mayor of the District of Columbia or his designated agent.

(2) The term "covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if such insurer becomes an insolvent insurer after August 14, 1973, and (a) the claimant or insured is a resident of the District of Columbia at the time of the insured event; or (b) the property from which the claim arises is permanently located in the District of Columbia. Such term shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(3) The term "insolvent insurer" means (a) an insurer authorized to transact insurance in the District of Columbia, either at the time the policy was issued or when the insured event occurred, who has been determined to be insolvent by a court of competent jurisdiction.

(4) The term "member insurer" means any person who (a) writes any kind of insurance to which this chapter applies, including the exchange of reciprocal or interinsurance contracts, and (b) is licensed to transact insurance in the District of Columbia.

(5) The term "net direct written premiums" means direct gross premiums written in the District on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. Such term does not include premiums on contracts between insurers or reinsurers.

(6) The term "person" includes individuals, corporations, associations, exchanges, and partnerships. (Aug. 14, 1973, Pub. L. 93-89, title I, § 104, 87 Stat. 297.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

In par. (2), "August 14, 1973" has been substituted for "the effective date of this title".

CROSS REFERENCE

Definition of "Association" and "Board", see § 35-1804.

DELEGATION OF FUNCTIONS

Reorg. Ord. No. 43, as amended Oct. 15, 1973, set out in the appendix to title 1, delegated to the Superintendent of Insurance the duties and functions vested in the Commissioner by this chapter.

§ 35-1804. Creation of the Association.

There is created a nonprofit unincorporated legal entity to be known as the District of Columbia Insurance Guaranty Association (hereafter in this chapter referred to as the "Association"). All member insurers shall be and remain members of the Association as a condition of their authority to transact insurance in the District of Columbia. The Association shall perform its functions under a plan of operation established and approved by the Mayor and shall exercise its powers through a Board of Directors (hereafter in this chapter referred to as the "Board"). For purposes of administration and assessment, the Association shall be divided into three separate accounts: (a) the workmen's compensation insurance account; (b) the automobile insurance account; and (c) the account for all other insurance to which this chapter applies. (Aug. 14, 1973, Pub. L. 93-89, title I, § 105, 87 Stat. 297.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1817.

§ 35-1805. Board of directors.

(a) The Board shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the Board shall be selected by member insurers subject to the approval of the Mayor. Vacancies on the Board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within sixty days after August 14, 1973, the Mayor may appoint the initial members of the Board.

(b) In approving selections to the Board, the Mayor shall consider among other things whether all member insurers are fairly represented.

(c) Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board. (Aug. 14, 1973, Pub. L. 93-89, title I, § 106, 87 Stat. 298.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

In subsec. (a), "August 14, 1973" has been substituted for "the effective date of this title".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1807.

§ 35-1806. Powers and duties of the Association.

(a) The Association shall—

(1) be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within thirty days after the determination of insolvency, or before the policy expiration date if less than thirty days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within thirty days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of \$100 and is less than \$300,000, except that the Association shall pay the full amount of any covered claim arising out of a workmen's compensation policy; except in no event shall the Association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises;

(2) be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(3) allocate claims paid and expenses incurred among the three accounts separately, and assess member insurers separately, according to subsection (b) of this section, for each account amounts necessary to pay the obligations of the Association under paragraph (1) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section 35-1811 and other expenses authorized by this title;

(4) investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested;

(5) notify such persons as the Mayor directs under section 35-1808(b)(1);

(6) handle claims through its employees or through one or more insurers or other persons designated, subject to the approval of the Mayor, as servicing facilities, except such designation may be declined by a member insurer; and

(7) reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association, and pay the other expenses of the Association authorized by this chapter.

(b) The assessments of each member insurer under paragraph (3) of subsection (a) of this section shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account. Each member insurer shall be notified of the assessment not

later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than 2 per centum of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The Association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

(c) The Association may—

(1) employ or retain such persons as are necessary to handle claims and perform other duties of the Association;

(2) borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation;

(3) sue or be sued;

(4) negotiate and become a party to such contracts as are necessary to carry out the purpose of this chapter;

(5) perform such other acts as are necessary or proper to effectuate the purpose of this chapter; and

(6) refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the Board finds that the assets of the Association in any account exceed the liabilities of that account as estimated by the Board for the coming year.

(Aug. 14, 1973, Pub. L. 93-89, title I, § 107, 87 Stat. 298.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1807.

§ 35-1807. Plan of operation—Notice of claims.

(a) (1) The Board shall submit to the Mayor a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Mayor.

(2) If the Board fails to submit a suitable plan of operation within ninety days following August 14, 1973, or if at any time thereafter the Board fails to submit suitable amendments to the plan, the Mayor shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the Mayor or superseded by a plan submitted by the Board and approved by the Mayor.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall—

(1) establish the procedures whereby all the powers and duties of the Association under section 35-1806 will be performed;

(2) establish procedures for handling assets of the Association;

(3) establish the amount and method of reimbursing members of the Board under section 35-1805;

(4) establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims;

(5) establish regular places and times for meetings of the Board;

(6) establish procedures for records to be kept of all financial transactions of the Association, its agents, and the Board;

(7) provide that any member insurer aggrieved by a final action or decision of the Association may appeal to the Mayor within thirty days after the action or decision;

(8) establish the procedures whereby selections for the Board will be submitted to the Mayor; and

(9) contain additional provisions necessary or proper for the execution of the powers and duties of the Association.

(d) The plan of operation may provide that any or all powers and duties of the Association, except those under section 35-1806 (a) (3) and (c) (2), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this Association, or its equivalent, in two or more States. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the Association. A delegation under this subsection shall take effect only with the approval of both the Board and the Mayor, and may be made only to a corporation, association, or organization which extends protection in a manner substantially similar to that provided by this chapter.

(e) Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the Association or its agent and a list of such claims shall be periodically submitted to the Association or similar organization in another State by the receiver or liquidator. (Aug. 14, 1973, Pub. L. 93-89, title I, § 108, 87 Stat. 299.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

In subsec. (a) (2), "August 14, 1973" has been substituted for "the effective date of this title".

§ 35-1808. Powers and duties of the Mayor.

(a) The Mayor shall—

(1) notify the Association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency; and

(2) upon request of the Board provide the Association with a statement of the net direct written premiums of each member insurer.

(b) The Mayor may—

(1) require that the Association notify the insureds of the involvement¹ insurer and any other interested parties of the determination of insolvency and of their rights under this chapter by mail at their last known address, where available, or by publication in a newspaper of general circulation, if sufficient information for notification by mail is not available;

(2) suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in the District of Columbia of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation, or levy a fine on any member insurer which fails to pay an assessment when due, except such fine shall not exceed 5 per centum of the unpaid assessment per month, except that no fine shall be less than \$100 per month; and

(3) revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

(c) All final orders or decisions of the Mayor made under this chapter shall be subject to review in accordance with section 1-1510. (Aug. 14, 1973, Pub. L. 93-89, title I, § 109, 87 Stat. 300.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1806.

§ 35-1809. Effect of paid claims.

(a) Any person recovering under this chapter shall be deemed to have assigned his rights under the policy to the Association to the extent of his recovery from the Association. Every insured or claimant seeking the protection of this chapter shall cooperate with the Association to the same extent as such person would have been required to cooperate with the insolvent insurer. The Association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer

would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the Association shall not operate to reduce the insured's liability to the receiver, liquidator, or statutory successor for unpaid assessments.

(b) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the Association or a similar organization in another State. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer.

(c) The Association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the Association which shall preserve the rights of the Association against the assets of the insolvent insurer. (Aug. 14, 1973, Pub. L. 93-89, title I, § 110, 87 Stat. 301.)

§ 35-1810. Nonduplication of recovery.

(a) Any person having a claim against an insurer under any provision in an insurance policy, other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent. (Aug. 14, 1973, Pub. L. 93-89, title I, § 111, 87 Stat. 301.)

§ 35-1811. Prevention of insolvencies.

(a) To aid in the detection and prevention of insurer insolvencies—

(1) it shall be the duty of the Board, upon majority vote, to notify the Mayor of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public; and

(2) the Board may, upon majority vote, request that the Mayor order an examination of any member insurer which the Board in good faith believes may be in a financial condition hazardous to the policyholders or the public.

(b) An examination may be conducted, under this section, as a National Association of Insurance Commissioner examination or may be conducted by such person as the Mayor designates. The cost of such examination shall be paid by the Association and the examination report shall be treated as are other examination reports. In no event shall such

¹ So in original. Probably should be "insolvent".

examination report be released to the Board prior to its release to the public, but this shall not preclude the Mayor from complying with subsection (c) of this section. The Mayor shall notify the Board when the examination is completed. The request for an examination shall be kept on file by the Mayor but it shall not be open to public inspection prior to the release of the examination report to the public.

(c) It shall be the duty of the Mayor to report to the Board when he has reasonable cause to believe that any member insurer examined or being examined at the request of the Board may be insolvent or in a financial condition hazardous to the policyholders or the public.

(d) The Board may, upon majority vote, make reports and recommendations to the Mayor upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(e) The Board may, upon majority vote, make recommendations to the Mayor for the detection and prevention of insurer insolvencies.

(f) The Board shall, at the conclusion of any insurer insolvency in which the Association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the Association, and submit such report to the Mayor. (Aug. 14, 1973, Pub. L. 93-89, title I, § 112, 87 Stat. 301.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1806.

§ 35-1812. Examination of the Association.

The Association shall be subject to examination and regulation by the Mayor. The Board shall submit, not later than March 30 of each year, a financial report for the preceding calendar year on a form approved by the Commissioner. (Aug. 14, 1973, Pub. L. 93-89, title I, § 113, 87 Stat. 302.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1813. Tax exemption.

The Association shall be exempt from payment of all fees and taxes levied or collected by the District of Columbia, except taxes levied on real or personal property. (Aug. 14, 1973, Pub. L. 93-89, title I, § 114, 87 Stat. 302.)

§ 35-1814. Recognition of assessments in rates.

The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the

amounts paid to the Association by the member insurer less any amounts returned to the member insurer by the Association and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer. (Aug. 14, 1973, Pub. L. 93-89, title I, § 115, 87 Stat. 302.)

§ 35-1815. Immunity.

There shall be no liability on the part of and no cause of action of any nature shall rise against any member insurer, the Association or its agents or employees, the Board, or the Mayor or his representatives for any action taken by them in the performance of their powers and duties under this chapter. (Aug. 14, 1973, Pub. L. 93-89, title I, § 116, 87 Stat. 302.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1816. Stay of proceedings—Reopening of default judgments.

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in the District of Columbia shall be stayed for sixty days from the date the insolvency is determined to permit proper defense by the Association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the Association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such judgment, order, decision, verdict, or finding and shall be permitted to defend against such claim on the merits. (Aug. 14, 1973, Pub. L. 93-89, title I, § 117, 87 Stat. 302.)

§ 35-1817. Termination—Distribution of account funds.

(a) The Mayor shall by order terminate the operation of the District of Columbia Insurance Guaranty Association as to any kind of insurance afforded by property or casualty insurance policies with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which—

(1) is a permanent plan which is adequately funded or for which adequate funding is provided; and

(2) extends or will extend to District of Columbia policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents and the protection and benefits provided with respect to such kind of insurance under this chapter.

(b) The Mayor shall by the same such order authorize discontinuance of future payments by insurers to the District of Columbia Insurance Guaranty Association with respect to the same kinds of insurance, except assessments and payments shall

continue, as necessary, to liquidate covered claims of insurers adjudged insolvent prior to said order and the related expenses not covered by such other plan.

(c) In the event the operation of any account of the District of Columbia Insurance Guaranty Association shall be so terminated as to all kinds of insurance otherwise within its scope, the Association as soon as possible thereafter shall distribute the balance of moneys and assets remaining in said account (after discharge of the functions of the Association with respect to prior insurer insolvencies not covered by such other plan, together with related expenses) to the insurers which are then writing in the District of Columbia policies of the kinds of insurance covered by such account, and which had made payments into such account, pro rata upon the basis of the aggregate of such payments made by the respective insurers to such account during the period of five years next preceding the date of such order. Upon completion of such distribution with respect to all of the accounts specified in section 35-1804, this chapter shall be deemed to have expired. (Aug. 14, 1973, Pub. L. 93-89, title I, § 118, 87 Stat. 302.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 19.—HOLDING COMPANY SYSTEM

Sec.

- 35-1901. Definitions.
- 35-1902. Subsidiaries of insurers.
- 35-1903. Acquisition of control of or merger with domestic insurer.
- 35-1904. Registration of insurers.
- 35-1905. Standards.
- 35-1906. Examination.
- 35-1907. Confidential treatment.
- 35-1908. Rules and regulations.
- 35-1909. Injunctions—Prohibitions against voting securities—Sequestration of voting securities.
- 35-1910. Criminal proceedings.
- 35-1911. Receivership.
- 35-1912. Revocation, suspension, or non-renewal of insurer's license.
- 35-1913. Judicial review—Mandamus.
- 35-1914. Conflict with other laws.
- 35-1915. Separability.

§ 35-1901. Definitions.

As used in this chapter, unless the context otherwise requires—

(a) "affiliate" (an "affiliate" of, or person "affiliated" with a specific person), means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by or is under common control with, the person specified;

(b) "Mayor" means the Mayor of the District of Columbia or his designated agent;

(c) "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or

nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 per centum or more of the voting securities of any other person;

(d) "District" means the District of Columbia;

(e) "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer;

(f) "insurer" includes any company defined by sections 35-302 and 35-1303, authorized to do the business of insurance in the District, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a State or political subdivision of a State;

(g) "person" is an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function;

(h) "securityholder" of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing;

(i) "subsidiary" of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries; and

(j) "voting security" includes any security convertible into or evidencing a right to acquire a voting security.

(Aug. 24, 1974, Pub. L. 93-388, § 2, 88 Stat. 752.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SHORT TITLE

The first section of Act Aug. 24, 1974, Pub. L. 93-388, 88 Stat. 752, provided: "That this Act [enacting this chapter] may be cited as the 'Holding Company System Regulatory Act'."

EFFECTIVE DATE

Section 17, Act Aug. 24, 1974, Pub. L. 93-388, 88 Stat. 763 provided: "This Act [enacting this chapter] shall take effect thirty days after the date of its enactment."

DELEGATION OF FUNCTIONS

Reorg. Ord. No. 43, as amended Nov. 6, 1974, set out in the appendix to title 1, delegated to the Superintendent of Insurance the duties and functions vested in the Commissioner by this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1904.

§ 35-1902. Subsidiaries of insurers.

(a) *Authorization.*—Any domestic insurer, either by itself or in cooperation with one or more persons, may, subject to the limitation stated in subsection

(b) of this section, organize or acquire one or more subsidiaries. Such subsidiaries may conduct any kind of business or businesses and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer.

(b) *Limited additional investment authority.*—

(1) The total amount which a domestic insurer may invest in the common stock, preferred stock, debt obligations, and other securities of the subsidiaries referred to in subsection (a) of this section shall not exceed the lesser of (A) 5 per centum of such insurer's assets, or (B) in the case of a capital stock company, 50 per centum of the excess of its capital, surplus, and contingency reserves over the then required statutory minimum capital and surplus, or, in the case of a mutual company, 50 per centum of the excess of its surplus and contingency reserves over the then required statutory minimum surplus.

(2) In calculating the amount of such investments, there shall be included (A) total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities, and (B) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

(c) *Exemptions from investment restrictions.*—The investments permitted under this section shall be in addition to the investments in common stock, preferred stock, debt obligations, and other securities permitted under sections 35-535, 35-541, and 35-1321, and the investments under this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in the aforesaid sections of law applicable to such investments of insurers.

(d) *Qualifications of investment: when determined.*—Whether any investment pursuant to this section meets the applicable requirements thereof is to be determined immediately after such investment is made, taking into account the then outstanding principal balance of all previous investments and debt obligations and the value of all previous investments in equity securities as of the date of the new investment.

(e) *Cessation of control.*—If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the Mayor may prescribe, unless at any time after such investment was made, such investment meets the requirements for investment under sections 35-535, 35-541, and 35-1321, and the insurer has notified the Mayor thereof. (Aug. 24, 1974, Pub. L. 93-388, § 3, 88 Stat. 753.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia as established by Reorg. Plan No. 3 of 1967 were abolished as of noon Jan. 2 1975 by § 1-131 and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1905.

§ 35-1903. Acquisition of control of or merger with domestic insurer.

(a) *Filing requirements.*—No person other than the issuer shall make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer, unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the Mayor and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the Mayor in the manner hereinafter prescribed. For purposes of this section a domestic insurer shall include any other person controlling a domestic insurer unless such other person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

(b) *Content of statement.*—The statement to be filed with the Mayor hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (a) is to be effected (hereinafter called "acquiring party"), and

(A) If such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years;

(B) If such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by subparagraph (A) of this subsection.

(2) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons

furnishing such consideration: *Provided*, That where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests.

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety days prior to the filing of the statement.

(4) Any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.

(5) The number of shares of any security referred to in subsection (a) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method by which the fairness of the proposal was arrived at.

(6) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.

(7) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

(8) A description of the purchase of any security referred to in subsection (a) during the twelve calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(9) A description of all recommendations to purchase any security referred to in subsection (a) made during the twelve calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party.

(10) Copies of all tender offers for, requests or invitations for tenders of exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and (if distributed) of additional soliciting material relating thereto.

(11) The terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

(12) Such additional information as the Mayor may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and

securityholders of the insurer or in the public interest. If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate, or other group, the Mayor may require that the information called for by paragraphs (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the Mayor may require that the information called for by paragraphs (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10 per centum of the outstanding voting securities of such corporation. If any material change occurs in the facts set forth in the statement filed with the Mayor and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Mayor and sent to such insurer within two business days after the person learns of such change. Such insurer shall send such amendment to its shareholders.

(c) *Alternative filing materials.*—If any offer, request, invitation, agreement, or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933 (15 U.S.C. 77a et seq.) or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or under a State law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may utilize such documents in furnishing the information called for by that statement.

(d) *Approval by Mayor; hearings.*—

(1) The Mayor shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing thereon, he finds that:

(A) After the change of control the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in the District or tend to create a monopoly therein;

(C) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with such acquiring party;

(D) The terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (a) are unfair and unreasonable to the securityholders of the insurer;

(E) The plans or proposals which the acquiring party has to liquidate the insurer, sell its

assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest; or

(F) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer or of the public to permit the merger or other acquisition of control.

(2) The public hearing referred to in paragraph (1) shall be held within thirty days after the statement required by subsection (a) is filed, and at least twenty days' notice thereof shall be given by the Mayor to the person filing the statement. Not less than seven days' notice of such public hearing shall be given by the person filing the statement to the insurer and to such other person as may be designated by the Mayor. The insurer shall give such notice to its securityholders. The Mayor shall make a determination within thirty days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments, and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the Superior Court of the District of Columbia. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(e) *Mailings to shareholders; payment of expenses.*—All statements, amendments, or other material filed pursuant to subsection (a) or (b), and all notices of public hearings held pursuant to subsection (d), shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the Mayor an acceptable bond or other deposit in an amount to be determined by the Mayor.

(f) *Exemptions.*—The provisions of this section shall not apply to—

(1) any offers, requests, invitations, agreements, or acquisitions by the person referred to in subsection (a) of any voting security referred to in subsection (a) which, immediately prior to the consummation of such offer, request, invitation, agreement, or acquisition, was not issued and outstanding;

(2) any offer, request, invitation, agreement, or acquisition if, under the terms thereof, the consummation of the transaction contemplated thereunder would result in the ownership by securityholders of the domestic insurer of stock processing¹ at least 80 per centum of the total combined

voting power of all classes of stock of the acquiring party entitled to vote, or at least 80 per centum of the total combined voting power of all classes of stock of the person in control of the acquiring party entitled to vote; and

(3) any offer, request, invitation, agreement, or acquisition which the Mayor by order shall exempt therefrom as (A) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (B) as otherwise not comprehended within the purposes of this section.

(g) *Violations.*—The following shall be violations of this section:

(1) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (a) or (b); or

(2) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the Mayor has given his approval thereto.

(h) *Jurisdiction; consent to service of process.*—The Superior Court of the District of Columbia is hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in the District who files a statement with the Mayor under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such a person of the Mayor to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the Mayor and transmitted by registered or certified mail by the Mayor to such person at his last known address. (Aug. 24, 1974, Pub. L. 93-388, § 4, 88 Stat. 753.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1909.

§ 35-1904. Registration of insurers.

(a) *Registration.*—Every insurer which is authorized to do business in the District and which is a member of an insurance holding company system shall register with the Mayor, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this chapter. Any insurer which is subject to registration under this section shall register within sixty days after the effective date of this chapter or fifteen days after it becomes subject to registration, whichever is later, unless the Mayor for good cause shown extends the time for registration, and then within such extended time. The Mayor may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish

¹ So in original, probably should be "possessing".

a copy of the registration statement or other information filed by such insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(b) *Information and form required.*—Every insurer subject to registration shall file a registration statement on a form provided by the Mayor, which shall contain current information about—

(1) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(2) the identity of every member of the insurance holding company system;

(3) the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates;

(A) loans, other investments, or purchases, sales or exchanges or securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) purchases, sales, or exchanges of assets;

(C) transactions not in the ordinary course of business;

(D) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; and

(F) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company.

(4) other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Mayor.

(c) *Materiality.*—No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purposes of this section. Unless the Mayor by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments, involving one-half of 1 per centum or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.

(d) *Amendments to registration statements.*—Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the Mayor within fifteen days after the end of the month in which it learns of each such change or addition: *Provided*, That subject to subsection (c) of section 35-1905, each registered insurer shall so report all dividends and other distributions to shareholders within two business days following the declaration thereof.

(e) *Termination of registration.*—The Mayor shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(f) *Consolidated filing.*—The Mayor may require or allow two or more affiliated insurers subject to

registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(g) *Alternative registration.*—The Mayor may allow an insurer which is authorized to do business in the District and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(h) *Exemptions.*—The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the Mayor by rule, regulation, or order shall exempt the same from the provisions of this section.

(i) *Disclaimer.*—The presumption of control as defined by section 35-1901(c), may be rebutted by a showing made in the manner herein provided that control does not exist in fact. The Mayor may determine, after furnishing all persons in interest notice and an opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect. Any person may file with the Mayor a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the Mayor disallows the disclaimer. The Mayor shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance.

(j) *Violations.*—The failure to file a registration statement or any amendment thereto required by this section within the time specified for such filing shall be a violation of this section. (Aug. 24, 1974, Pub. L. 93-388, § 5, 88 Stat. 757.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35-1905, 35-1906, 35-1907.

§ 35-1905. Standards.

(a) *Transactions with affiliates.*—Material transactions by registered insurers with their affiliates shall be subject to the following standards:

(1) the terms shall be fair and reasonable;

(2) the books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions; and

(3) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) *Adequacy of surplus.*—For the purposes of this section in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the several lines of insurance;

(3) the number and size of risks insured in each line of business;

(4) the extent of the geographical dispersion of the insurer's insured risks;

(5) the nature and extent of the insurer's reinsurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) the surplus as regards policyholders maintained by other comparable insurers;

(9) the adequacy of the insurer's reserves; and

(10) the quality and liquidity of investments in subsidiaries made pursuant to section 35-1902. The Mayor may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment such investment so warrants.

(c) *Dividends and other distributions.*—(1) No insurer subject to registration under section 35-1904 shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until (A) thirty days after the Mayor has received notice of the declaration thereof and has not within such period disapproved such payment, or (B) the Mayor shall have approved such payment within such thirty-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of (A) 10 per centum of such insurer's surplus as regards policyholders as of the thirty-first day of December next preceding or (B) the net gain from operations of such insurer, if such insurer is a life insurer, or the net investment income, if such insurer is not a life insurer, for the twelve-month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Mayor's approval thereof, and such a declaration shall con-

fer no rights upon shareholders until (A) the Mayor has approved the payment of such dividend or distribution or (B) the Mayor has not disapproved such payment within the thirty-day period referred to above. (Aug. 24, 1974, Pub. L. 93-388, § 6, 88 Stat. 759.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1904.

§ 35-1906. Examination.

(a) *Power of Mayor.*—Subject to the limitation contained in this section and in addition to the powers which the Mayor has under the insurance laws of the District relating to the examination of insurers, the Mayor shall also have the power to order any insurer registered under section 35-1904 to produce such records, books, papers or other information in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the Mayor shall have the power to examine such affiliates to obtain such information.

(b) *Purpose and limitation of examination.*—The Mayor shall exercise his power under subsection (a) only if the examination of the insurer under and as is provided for by the insurance laws of the District is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(c) *Use of consultants.*—The Mayor may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the Mayor's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a). Any persons so retained shall be under the direction and control of the Mayor and shall act in a purely advisory capacity.

(d) *Expenses.*—Each registered insurer producing for examination records, books, and papers pursuant to subsection (a) shall be liable for and shall pay the expense of such examination in accordance with the provisions of sections 35-418 and 35-1313, pertaining to examination expense. (Aug. 24, 1974, Pub. L. 93-388, § 7, 88 Stat. 760.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35-1907.

§ 35-1907. Confidential treatment.

All information, documents, and copies thereof obtained by or disclosed to the Mayor or any other person in the course of an examination or investigation made pursuant to section 35-1906 and all information reported pursuant to section 35-1904,

shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the Mayor or any other person, except to insurance departments of other States, without the prior written consent of the insurer to which it pertains unless the Mayor, after giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate. (Aug. 24, 1974, Pub. L. 93-388, § 8, 88 Stat. 761.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1908. Rules and regulations.

The Mayor may, upon notice and opportunity of all interested persons to be heard, issue such rules, regulations, and orders as shall be necessary to carry out the provisions of this chapter. (Aug. 24, 1974, Pub. L. 93-388, § 9, 88 Stat. 761.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1909. Injunctions—Prohibitions against voting securities—Sequestration of voting securities.

(a) Whenever it appears to the Mayor that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this chapter or of any rule, regulation, or order issued by the Mayor hereunder, the Mayor may apply to the Superior Court of the District of Columbia for an order enjoining such insurer of such director, officer, employee, or agent thereof from violating or continuing to violate this chapter or any such rule, regulation, or order, and for such other equitable relief as the failure of the case and the interests of the insurer's policyholders, creditors, shareholders, or the public may require.

(b) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, regulation, or order issued by the Mayor hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of the insurer or unless the Superior Court of the District of Columbia has so ordered. If an insurer or the Mayor has reason to believe that any security of the insurer has been or is about to be acquired in contravention of

the provisions of this chapter or of any rule, regulation, or order issued by the Mayor hereunder the insurer or the Mayor may apply to the Superior Court of the District of Columbia to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of section 35-1903 of any rule, regulation, or order issued by the Mayor thereunder to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the insurer's policyholders, creditors, shareholders, or the public may require.

(c) In any case where a person has or is proposing to acquire any voting securities in violation of this chapter or any rule, regulation, or order issued by the Mayor hereunder, the Superior Court of the District of Columbia may, on such notice as the court deems appropriate, upon the application of the insurer or the Mayor seize or sequester any voting securities of the insurer owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this chapter. Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers shall be deemed to be in the District. (Aug. 24, 1974, Pub. L. 93-388, § 10, 88 Stat. 761.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1910. Criminal proceedings.

Whenever it appears to the Mayor that any insurer or any director, officer, employee, or agent thereof has committed a willful violation of this chapter, the Mayor may cause criminal proceedings to be instituted in the District against such insurer or the responsible director, officer, employee, or agent thereof. Any insurer which willfully violates this chapter may be fined not more than \$1,000. Any individual who willfully violates this chapter may be fined not more than \$1,000 or, if such willful violation involves the deliberate perpetration of a fraud upon the Mayor, imprisoned not more than two years or both. (Aug. 24, 1974, Pub. L. 93-388, § 11, 88 Stat. 762.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1911. Receivership.

Whenever it appears to the Mayor that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, the Mayor may proceed as provided under the insurance laws

of the District to take possession of the property of such domestic insurer and to conduct the business thereof. (Aug. 24, 1974, Pub. L. 93-388, § 12, 88 Stat. 762.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1912. Revocation, suspension, or non-renewal of insurer's license.

Whenever it appears to the Mayor that any person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the Mayor may, after giving notice and an opportunity to be heard, suspend, revoke, or refuse to renew such insurer's license or authority to do business in the District for such period as he finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law. (Aug. 24, 1974, Pub. L. 93-388, § 13, 88 Stat. 762.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1913. Judicial review—Mandamus.

(a) Any person aggrieved by any act, determination, rule, regulation, or order or any other action

of the Mayor pursuant to this chapter may appeal therefrom to the District of Columbia Court of Appeals, in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510).

(b) Any person aggrieved by any failure of the Mayor to act or make a determination required by this chapter may petition the Superior Court of the District of Columbia for a writ in the nature of a mandamus or a peremptory mandamus directing the Mayor to act or make such determination forthwith. (Aug. 24, 1974, Pub. L. 93-388, § 14, 88 Stat. 762.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 35-1914. Conflict with other laws.

All laws and parts of laws of the District inconsistent with this chapter are hereby superseded with respect to matters covered by this chapter. (Aug. 24, 1974, Pub. L. 93-388, § 15, 88 Stat. 763.)

§ 35-1915. Separability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and for this purpose the provisions of this chapter are separable. (Aug. 24, 1974, Pub. L. 93-388, § 16, 88 Stat. 763.)

TITLE 36.—LABOR

Chap. Sec.
7. Public Employment Service..... 36-701

Chapter 1A.—VOLUNTARY APPRENTICES

Sec.
36-125a. Transfer of functions—Abolition of office of Director of Apprenticeship.

§ 36-122. Apprenticeship Council—Membership—Term—Compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-123. Director of Apprenticeship—Assistance furnished.

CROSS REFERENCE

Transfer of functions and abolition of office of Director of Apprenticeship, see § 36-125a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-125a.

§ 36-124. Meetings of Apprenticeship Council—Rules and regulations—Reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-125. Administration of chapter—Responsibility of Board of Education.

CROSS REFERENCE

Transfer of functions and abolition of office of Director of Apprenticeship, see § 36-125a.

§ 36-125a. Transfer of functions—Abolition of office of Director of Apprenticeship.

All functions of the Secretary of Labor and of the Director of Apprenticeship under this chapter are transferred to and shall be exercised by the Mayor. The office of Director of Apprenticeship provided for in section 36-123 is abolished. (Dec. 24, 1973, Pub. L. 93-198, title II, § 204(d), 87 Stat. 783.)

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as a part of the Act of May 21, 1946, which comprises this chapter.

EFFECTIVE DATE

Section effective July 1, 1974, see sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

TRANSFER OF EXISTING PERSONNEL, PROPERTY, RECORDS, AND FUNDS

See note under § 36-701.

§ 36-130. Violations of agreements—Hearings—Determinations—Appeals.

(a) Upon the complaint of any interested person or upon his own initiative, the Director may investigate to determine if there has been a violation of the terms of an apprenticeship agreement made under this chapter, and he may hold hearings, inquiries, and other proceedings necessary to such investigation and determination. The parties to such an agreement shall be given a fair and impartial hearing after reasonable notice thereof. All such hearings, investigations, and determinations shall be made under authority of reasonable rules and procedures prescribed by the Apprenticeship Council, subject to the approval of the Secretary of Labor.

(b) The determination of the Director shall be filed with the council. If no appeal therefrom is filed with the council within ten days after the date thereof, as herein provided, such determination shall become the order of the council. Any person aggrieved by any determination or action of the Director may appeal therefrom to the council, which shall hold a hearing thereon after due notice to the interested parties. Any person aggrieved by the action of the Council may appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510). (May 21, 1946, 60 Stat. 206, ch. 267, § 10; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91-358, title I, § 163(e), 84 Stat. 583.)

CODIFICATION

Section is set out in this Supplement to correct a typographical error in the main edition.

Chapter 3.—EMPLOYMENT OF WOMEN

§ 36-306. Inspectors—Appointment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-308. Inspectors to enforce law—Reports.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-309a. Exceptions as to requirements of certain sections, and as to keeping records of hours worked.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 4.—MINIMUM WAGES AND INDUSTRIAL SAFETY

SUBCHAPTER I.—MINIMUM WAGES

§ 36-401. Findings and declaration of policy.

NOTES TO DECISIONS

Construction

Opinion which interpreted D.C. Minimum Wage Act and which was published by United States Court of Appeals for the District of Columbia after effective date of Judicial Reorganization Act and at time when District of Columbia Court of Appeals had final authority to interpret a District of Columbia enactment did not constitute controlling precedent for the District of Columbia Court of Appeals, even though leave to appeal in the case had been granted prior to effective date of the Judicial Reorganization Act. *District of Columbia et al. v. Schwerman Trucking Company* (D.C. App. 1974, 327 A. 2d 818).

Bus drivers who were engaged in interstate commerce and who regularly spent more than 50% of their work week in District of Columbia were entitled to benefits of District of Columbia Minimum Wage Act [this subchapter]. *K. C. Williams et al. v. W. M. A. Transit Company* (1972, 472 F. 2d 1258, 153 U.S. App. D.C. 183; rev'g 268 A. 2d 261).

Statutory interpretations by D.C. Minimum Wage Board and Corporation Counsel were entitled to weight as construction of D.C. code unless plainly unreasonable or contrary to ascertainable legislative intent. *Id.*

§ 36-402. Definitions.

As used in this subchapter—

(1) the term "Mayor" means the Mayor of the District of Columbia or his designated agent or representative including the Minimum Wage and Industrial Safety Board.

(5) The term "employee" includes any individual employed by an employer, except that such term shall not include—

(A) any individual who, without payment and without expectation of any gain, directly or indirectly, volunteers to engage in the activities of an educational, charitable, religious, or nonprofit organization;

(B) any lay member elected or appointed to office within the discipline of any religious organization and engaged in religious functions; or

(C) any individual employed casual babysitters,¹ in or about the residence of the employer.

(As amended Nov. 1, 1975, D.C. Law 1-32, § 2 (b), (c), 22 DCR 2549.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-32, amended par. (1) generally, and amended par. (5)(C) by substituting "casual babysitters" for "in domestic service or otherwise employed".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4 of Act Nov. 1, 1975, D.C. Law 1-32, provided that "This act [partially repealing § 36-408(d) and amending §§ 36-402 and 36-403] shall become effective at the end of the thirty day period provided for congressional review of acts of the Council of the District of Columbia in section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

NOTES TO DECISIONS

Construction

Opinion which interpreted D.C. Minimum Wage Act and which was published by United States Court of Appeals for the District of Columbia after effective date of Judicial Reorganization Act and at time when District of Columbia Court of Appeals had final authority to interpret a District of Columbia enactment did not constitute controlling precedent for the District of Columbia Court of Appeals, even though leave to appeal in the case had been granted prior to effective date of the Judicial Reorganization Act. *District of Columbia et al. v. Schwerman Trucking Company* (D.C. App. 1974, 327 A. 2d 818).

Bus drivers who were engaged in interstate commerce and who regularly spent more than 50% of their work week in District of Columbia were entitled to benefits of District of Columbia Minimum Wage Act [this subchapter]. *K. C. Williams et al. v. W. M. A. Transit Company* (1972, 472 F. 2d 1258, 153 U.S. App. D.C. 183; rev'g 268 A. 2d 261).

Statutory interpretations by D.C. Minimum Wage Board and Corporation Counsel were entitled to weight as construction of D.C. code unless plainly unreasonable or contrary to ascertainable legislative intent. *Id.*

§ 36-403. Minimum wage and overtime compensation—Workweek—Wage orders.

(a) (1) * * *

(3) Every employer of a private household worker shall pay to each of his employees (A) the wage established for each such employee in a wage order issued under this subchapter, or (B) not less than a wage of \$2.50 an hour, whichever is higher.

(g) The Mayor shall issue a wage order, effective not more than 120 days after November 1, 1975, providing for the payment of the minimum wage and overtime compensation prescribed in subsections (a) (3) and (b) (1) (B) of this section to persons employed as private household workers. Such wage order shall include such definitions and regulations as the Mayor may prescribe to prevent the circumvention or evasion of such wage order and to safeguard the minimum wage rate and overtime compensation provision. The Mayor shall publish a notice once a week, for four successive weeks, in a newspaper of general circulation, stating that he will, on a date and at a place named in the notice, hold a public hearing for the purpose of allowing interested persons to comment on such proposed wage order. Such notice shall contain a copy of such proposed wage order or a summary thereof. Within thirty days after such hearing, the Mayor shall issue such a wage order as may be proper or necessary to effectuate the purposes of this subchapter. Notice of

¹ So in original.

such wage order shall be published in a newspaper of general circulation and such wage order shall take effect upon the expiration of thirty days after the date on which such wage order is issued by the Mayor. (As amended Nov. 1, 1975, D.C. Law 1-32, § 3, 22 DCR 2549.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

In subsec. (g), "November 1, 1975" has been substituted for "the effective date of the District of Columbia Minimum Wage Amendment Act of 1975". See note under § 36-402.

AMENDMENT

1975—Act Nov. 1, 1975, D.C. Law 1-32, added subsecs. (a) (3) and (g).

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 36-402.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Hotel and restaurant employees

Minimum Wage and Industrial Safety Board had authority to promulgate order providing for a \$2.25-minimum hourly wage for persons employed in hotel, restaurant and allied occupations, notwithstanding contention that provisions of Minimum Wage Act were intended to place a freeze on minimum wage rights for such employees or contention that Congress had intended that such employees were only to be permitted to obtain increase in minimum wage rates by a special act of Congress. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Overtime

Employee who is covered by D.C. Minimum Wage Act and who works more than 40 hours a week inside the District for the same employer is entitled to statutory overtime pay regardless of whether he is subject to hours of service regulation by the Department of Transportation. *District of Columbia et al. v. Schwerman Trucking Company* (D.C. App. 1974, 327 A. 2d 818).

Hours worked in places outside borders of District of Columbia by employees covered by D.C. Minimum Wage Act need not be credited to employees for purposes of computing overtime pay under the Act. *Id.*

§ 36-404. Exemptions of certain employees from minimum wage and overtime provisions of section 36-403.

* * * * *

(b) The overtime provisions of section 36-403(b)

(1) shall not apply with respect to—

(1) any employee employed as a seaman;

(2) any employee employed by a railroad;

(3) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, or trucks, if employed by a non-manufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers;

(4) any employee employed primarily to wash automobiles by an employer, more than 50 per-

cent of whose annual dollar volume of sales is derived from washing automobiles, if for such employee's employment in excess of one hundred and sixty hours in a period of four consecutive workweeks, such employees receives compensation at a rate not less than one and one-half times the regular rate at which he is employed;

(5) any employee employed as an attendant at a parking lot or parking garage; or

(6) any employee employed by a carrier by air who voluntarily exchanges workdays with another employee for the primary purpose of utilizing air travel benefits available to such employees.

(As amended Dec. 29, 1973, Pub. L. 93-223, § 1, 87 Stat. 936.)

AMENDMENT

1973—Act Dec. 29, 1973, Pub. L. 93-223, amended subsec. (b) by:

(1) striking the word "or" following the semicolon in subparagraph (4);

(2) striking the period at the end of subparagraph (5) and inserting in lieu thereof "; or";

(3) inserting after subparagraph (5) new subparagraph (6) to read as above set out.

NOTES TO DECISIONS

Construction

Opinion which interpreted D.C. Minimum Wage Act and which was published by United States Court of Appeals for the District of Columbia after effective date of Judicial Reorganization Act and at time when District of Columbia Court of Appeals had final authority to interpret a District of Columbia enactment did not constitute controlling precedent for the District of Columbia Court of Appeals, even though leave to appeal in the case had been granted prior to effective date of the Judicial Reorganization Act. *District of Columbia et al. v. Schwerman Trucking Company* (D.C. App. 1974, 327 A. 2d 818).

Motor carrier exemption in federal Fair Labor Standards Act was inapplicable to 1966 D.C. Minimum Wage Act. *Id.*

Bus drivers who were engaged in interstate commerce and who regularly spent more than 50% of their work week in District of Columbia were entitled to benefits of District of Columbia Minimum Wage Act [this subchapter]. *K. C. Williams et al. v. W. M. A. Transit Company* (1972, 472 F. 2d 1258, 153 U.S. App. D.C. 183; rev'g 268 A. 2d 261).

Statutory interpretations by D.C. Minimum Wage Board and Corporation Counsel were entitled to weight as construction of D.C. code unless plainly unreasonable or contrary to ascertainable legislative intent. *Id.*

§ 36-405. Powers and duties of Commissioner—Investigations—Statements from employers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-406. Reconsideration and revision of wage orders—Ad hoc committees—Committee reports of findings and recommendations—Failure to report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Ad hoc committee

That ad hoc committee, which made recommendations to Minimum Wage and Industrial Safety Board with regard to appropriate minimum wage for persons employed in hotel, restaurant and allied occupations and which was composed of three employer representatives, three employee representatives and three representatives of public, had no member who was an employer representative of "allied occupations" did not invalidate Board's minimum wage order, absent indication that interests of employers in "allied occupations" were not adequately represented, advanced and fully protected. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Discretion of Board

Minimum Wage and Industrial Safety Board acted properly and within its discretion when, in revising minimum wage order with regard to persons employed in hotel, restaurant and allied occupations, Board gave greater weight to amount of wages sufficient to provide adequate maintenance and to protect health than was given to fair and reasonable value of work performed and wages paid in metropolitan region by fair employers for work of like or comparable character. *Hotel Association of Washington, D.C., et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

In determining appropriate minimum wage, Minimum Wage and Industrial Safety Board has discretion with regard to relative weight to be given to the three statutory criteria consisting of amount of wages sufficient to provide adequate maintenance and to protect health, fair and reasonable value of work performed and wages paid in metropolitan region by fair employers for work of like or comparable character. *Id.*

Fair and reasonable value of work

In determining fair and reasonable value of work performed by persons employed in hotel, restaurant and allied occupations, for purposes of revising minimum wage order, Minimum Wage and Industrial Safety Board could consider wages paid in metropolitan region by fair employers for work of like or comparable character. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Findings of fact—Substantial evidence

Finding by Minimum Wage and Industrial Safety Board, which promulgated order providing for \$2.25-minimum hourly wage rate for persons employed in hotel, restaurant and allied occupations, that an employed person would require a wage of at least \$2.40 an hour to provide adequate maintenance and to protect health was supported by substantial evidence. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

§ 36-407. Insurance of revised wage orders—Notice and hearing—Notice and effective date of orders—Contents of orders—Restrictions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Authority of Board

Minimum Wage and Industrial Safety Board had authority, with regard to its order increasing minimum wage

for persons employed in hotel, restaurant and allied occupations, to adopt definitions and detailed delineation of minimum wage standards, which were statements of terms and conditions calculated to assist Board to carry out purposes of order, to prevent circumvention or evasion of it and to safeguard wage rates and overtime compensation established in order. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Conflict of interest

That employee representative on Minimum Wage and Industrial Safety Board was business agent for a union and was member of joint executive board of international union of hotel and restaurant employees and bartenders did not preclude him from participating in revision of minimum wage order with regard to persons employed in hotel, restaurant and allied occupations on theory that such representative possessed a disqualifying conflict of interests, in that employee representative and employer representative on such tripartite Board were expected to be partisan. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Discretion of Board

Minimum Wage and Industrial Safety Board acted properly and within its discretion when, in revising minimum wage order with regard to persons employed in hotel, restaurant and allied occupations, Board gave greater weight to amount of wages sufficient to provide adequate maintenance and to protect health than was given to fair and reasonable value of work performed and wages paid in metropolitan region by fair employers for work of like or comparable character. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

In determining appropriate minimum wage, Minimum Wage and Industrial Safety Board has discretion with regard to relative weight to be given to the three statutory criteria consisting of amount of wages sufficient to provide adequate maintenance and to protect health, fair and reasonable value of work performed and wages paid in metropolitan region by fair employers for work of like or comparable character. *Id.*

Fair and reasonable value of work

In determining fair and reasonable value of work performed by persons employed in hotel, restaurant and allied occupations, for purposes of revising minimum wage order, Minimum Wage and Industrial Safety Board could consider wages paid in metropolitan region by fair employers for work of like or comparable character. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Findings of fact—Substantial evidence

Finding by Minimum Wage and Industrial Safety Board, which promulgated order providing for \$2.25-minimum hourly wage rate for persons employed in hotel, restaurant and allied occupations, that an employed person would require a wage of at least \$2.40 an hour to provide adequate maintenance and to protect health was supported by substantial evidence. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Notice

Even if notice requirements of the D.C. Administrative Procedure Act were applicable with regard to proposed revised minimum wage order of Minimum Wage and Industrial Safety Board, such requirements were met where notice of proposed order was published and such notice set forth time and place of public hearing, contained summary of major provisions of proposed order and stated that such order, recommendations of ad hoc committee, wage data, cost of living budgets and related materials would be available at hearing and prior thereto at office of Board. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

Public hearing preliminary to revision of Minimum Wage and Industrial Safety Board's order with regard to persons employed in hotel, restaurant and allied occupations was not a "contested case" within purview of notice provisions of the D.C. Administrative Procedure Act. *Id.*

Validity of wage order

Minimum Wage and Industrial Safety Board order providing for a \$2.25-minimum hourly wage for persons employed in hotel, restaurant and allied occupations was not arbitrary and capricious. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

§ 36-408. Regulations of Council — Contents — Notice and hearing—Effective date.

PARTIAL REPEAL OF SUBSEC. (d)

Section 2(a) of Act Nov. 1, 1975, D.C. Law 1-32, 22 DCR 2549, provided that "For the purposes of this act Section 36-408(d) of the Act (D.C. Code, Section 36-408(d)) is hereby repealed."

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EFFECTIVE DATE OF PARTIAL REPEAL OF SUBSEC. (d)

See note under § 36-402.

NOTES TO DECISIONS

Authority of Board

Minimum Wage and Industrial Safety Board had authority, with regard to its order increasing minimum wage for persons employed in hotel, restaurant and allied occupations, to adopt definitions and detailed delineation of minimum wage standards, which were statements of terms and conditions calculated to assist Board to carry out purposes of order, to prevent circumvention or evasion of it and to safeguard wage rates and overtime compensation established in order. *Hotel Association of Washington, D.C. et al. v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 318 A. 2d 294).

§ 36-409. Judicial review of orders—Procedure—Scope of review—Additional evidence—Modification of or setting aside findings or orders—Stay pending determination of proceedings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-410. Authority of Commissioner to take testimony and issue subpoenas—Punishment for contempt.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-411. Records of employers—Availability for inspection—Sworn statements—Statements to employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-412. Posting of law and wage orders—Commissioner to furnish copies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-413. Prohibited acts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-415. Employee remedies—Liability of employer—Liquidated damages—Actions—Parties—Attorney fees and costs—Defenses—Assignment of claim—Supervision of payment—Waiver.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Damages

Trial court lacked authority, under the District of Columbia Minimum Wage Act amendment of 1966, to award liquidated damages in an action brought by the District as assignee of employee's claims that employer had failed to pay wages to which they were entitled under the Act. *Johnson & Jenkins Funeral Home, Inc. v. District of Columbia, Assignee etc.* (D.C. App. 1974, 318 A. 2d 596).

Evidence—Sufficiency

Findings of Superior Court, in action by District of Columbia against employer to recover wage claims assigned to District by two employees claiming that employer failed to pay wages to which they were entitled under Minimum Wage Act, wherein court entered judgment for plaintiff for compensatory and liquidated damages, were supported by the evidence. *Johnson & Jenkins Funeral Home, Inc. v. District of Columbia, Assignee etc.* (D.C. App. 1974, 318 A. 2d 596).

Liquidated damages

Wage payment law (§ 36-601 et seq.) rather than minimum wage law was applicable to former employee's claims against former employer for allegedly unpaid wages and, therefore denial of former employee's claim for liquidated damages, attorneys' fees and costs in reliance on the minimum wage law was improper, where former employee did not quarrel with hourly rate but sued on basis of wages allegedly due for certain hours of work. *D. E. Klingaman v. Holiday Tours, Inc.* (D.C. App. 1973, 309 A. 2d 54).

§ 36-419. Short title.

SHORT TITLE

The first section of Act Nov. 1, 1975, D.C. Law 1-32, provided "That this act [partially repealing § 36-408(d), and amending §§ 36-402 and 36-403] may be cited as the 'District of Columbia Minimum Wage Amendments Act of 1975'."

SUBCHAPTER II.—INDUSTRIAL SAFETY

§ 36-433. Additional duties of Board under this subchapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-434. Rules and regulations—Public hearing—Publication—Effective date.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-440. Office space and supplies for Board.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-441. Annual report to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—WORKMEN'S COMPENSATION

Sec.

36-503. Administrative expenses.

36-504. District employees—Transfer of functions with respect to processing claims.

§ 36-501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

EFFECTIVE DATE

Section 4 (formerly section 3) of act May 17, 1928, renumbered Oct. 26, 1973, Pub. L. 93-140, § 19, 87 Stat. 507, provided: "This Act [enacting this chapter] shall take effect July 1, 1928."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36-438.

NOTES TO DECISIONS

Award—Attorney's fee

Requirement of time sheet would procure information to enhance basis for deciding what was reasonable attorney's fee, and where board, in violation of its own regulations, awarded attorney's fees without benefit of statement of extent and character of necessary work done, case would be remanded for further proceedings. *C. G. Matthews et al. v. N. C. A. Walter, Deputy Commissioner, etc. et al.* (1975, 512 F. 2d 941, 168 U.S. App. D.C. 27).

It was congressional intent that amendment authorizing award of attorney's fees apply in pending proceedings to services performed after its effective date, and board did not act unconstitutionally in awarding attorney's fees to workmen's compensation claimant's counsel for serv-

ices rendered after effective date of authorizing amendment in case concerning death occurring prior to that date. *Id.*

Commissioner's finding of fact

Finding by deputy commissioner that employer and insurance carrier, which retained claim letter which asserted benefits on behalf of widow and son of deceased employee and which was sent prior to the expiration of one-year statute of limitations and which did not forward letter to the deputy commissioner for filing, were estopped to assert defense of statute of limitations under the Longshoremen's and Harbor Workers' Compensation Act was supported by substantial evidence on whole record. *Blackwell Construction Co. v. J. Garrell, Deputy Commissioner etc.* (1972, 352 F. Supp. 193).

Construction

"Modification of Awards" section of Longshoremen's and Harbor Workers' Act incorporated by reference in District of Columbia Compensation Act was intended to apply only to cases in which deputy commissioner had "finally acted" by issuing or denying compensation order, and amendment was not intended to impose additional time barrier to recovery by claimants who filed application within time otherwise permitted and were still awaiting order thereon. *Intercounty Construction Corporation et ano. v. N. C. A. Walter, Deputy Commissioner, etc.* (1974, 500 F. 2d 815, 163 U.S. App. D.C. 147; *aff'd* 95 S. Ct. 2016, 422 U.S. 1).

Longshoremen's and Harbor Workers' Compensation Act is to be liberally construed in the light of its remedial and humanitarian purposes and court will not construe act to enable plaintiffs to escape liability to persons entitled to recover for admittedly compensable death by reading into it technical restrictions on tolling of filing period which are inconsistent with purpose of Act. *Blackwell Constructon Co. v. J. Garrell, Deputy Commissioner, etc.* (1972, 352 F. Supp. 193).

Dependency

At least in cases such as that in which workman's drinking and its adverse potential impact on his minor children constituted justifiable cause for his widow's living apart from workman, effect of original justification persists and inheres in relationship of parties despite change in circumstances since initial separation. *C. G. Matthews et al. v. N. C. A. Walter, Deputy Commissioner, etc. et al.* (1975, 512 F. 2d 941, 168 U.S. App. D.C. 27).

Requisite conjugal nexus existed between claimant and workman at time of his death where decedent knowingly accepted claimant's relationship with another man, neither attempted to remarry, decedent contributed to her support and continued to have sexual relations with her, she continued to hold herself out as decedent's wife and she helped care for decedent when he was ill. *Id.*

Employment relationship

Though real estate broker worked on commission basis he was not independent contractor but was "employee", within workmen's compensation recovery limitations, of corporation which required him to attend sales meetings and, as directed, to check out possible listings and "sit" on specific property, to report on all sales transactions before they were "finalized," to comply with requirements, standards and methods of doing business established by corporation and to clear with corporation all prospective listings of property and all potential sales and who was furnished office, secretarial help, business card and car and advance on expenses and hospitalization and life insurance. *R. W. McGinniss v. Frederick W. Berens Sales, Inc., et ano.* (D.C. App. 1973, 308 A. 2d 765).

Enforcement of orders

If employee seeks to enforce default entered for non-payment of award by employer, employer does not have to make payment under supplementary order until court finds that order was in accordance with law. *L. Leonard v. N. C. A. Walter, Deputy Commissioner, etc.* (1973, 356 F. Supp. 56).

Final order enforceable by claimant or deputy commissioner can be either deputy commissioner's original order or his supplemental order, if one was entered. *Id.*

Before enforcement of final order of deputy commissioner, court must determine whether order was made in

accordance with law, and employer does not have to pay award until determination is made. *Id.*

Estoppel

Estoppel may be asserted in cases brought under the Longshoremen's and Harbor Workers' Compensation Act to prevent party from relying on defense of statute of limitations. *Blackwell Construction Co. v. J. Garrell, Deputy Commissioner, etc.* (1972, 352 F. Supp. 193).

Finality of award

Ordinarily, compensation order under Longshoremen's and Harbor Workers' Act becomes final unless employer institutes judicial proceedings to set it aside within 30 days of entry of order. *L. Leonard v. N. C. A. Walter, Deputy Commissioner, etc.* (1973, 356 F. Supp. 56).

Parties

Benefits Review Board was not a proper party and could not be compelled to participate in litigation over the propriety of its decision vacating order setting aside denial of claim for workmen's compensation death benefits under Longshoremen's and Harbor Workers' Compensation Act which had been adopted as District of Columbia's Workmen's Compensation Act. *E. McCord v. Benefits Review Board et al.* (1975, 514 F. 2d 198, 168 U.S. App. D.C. 302).

Review

Under Longshoremen's and Harbor Workers' Act, employer must make payment of award before he can obtain ruling on his claim before district court to set aside award, unless he obtains interlocutory injunction. *L. Leonard v. N. C. A. Walter, Deputy Commissioner, etc.* (1973, 356 F. Supp. 56).

Third party, injury by

District of Columbia workmen's compensation statute, i.e., the Longshoremen's and Harbor Workers' Compensation Act, did not bar suit against the District by employees of Districts independent contractor, which had contracted to install water main, to recover, on theory of inherently dangerous activity necessitating special precautions, for injuries sustained when flames erupted at open end of 66-inch diameter water main, which had been completely closed off for some 41 days and which employees were in process of cleaning when flames erupted and engulfed their caecal environment. *R. Lindler et ano. v. District of Columbia* (1974, 502 F. 2d 495, 164 U.S. App. D.C. 35).

Time for filing claim

Under District of Columbia Compensation Act, timely filed claim remains pending until compensation order is entered by deputy commissioner, and claimant, to preserve his claim, is not required to refile timely filed but unadjudicated claim after carrier stops paying compensation. *Intercounty Construction Corporation et ano. v. N. C. A. Walter, Deputy Commissioner, etc.* (1974, 500 F. 2d 815, 163 U.S. App. D.C. 147; aff'd 95 S. Ct. 2016, 422 U.S. 1).

Making of a voluntary payment of compensation on account of compensable death under Longshoremen's and Harbor Workers' Compensation Act permits the filing of a claim within one year of the date of the last payment and it is not required that such claim be filed by the same person to whom voluntary payment was made. *Blackwell Construction Co. v. J. Garrell, Deputy Commissioner, etc.* (1972, 352 F. Supp. 193).

— Tolling of filing period

The one-year statute of limitations for filing claim for death benefits under Longshoremen's and Harbor Workers' Compensation Act was tolled as to minor son of deceased employee because he had no guardian or other authorized representative with legal duty to file a claim on his behalf. *Blackwell Construction Co. v. J. Garrell, Deputy Commissioner, etc.* (1972, 352 F. Supp. 193).

Payments of compensation made to woman who filed claim as surviving widow on account of death of deceased employee were payments of compensation and tolled the filing period, so that the claim of the actual widow and the deceased's minor son filed approximately seven months after final payment to such person were timely. *Id.*

Payments made with intent of providing money allowance to dependent of decedent are payments of compensation within meaning of Compensation Act provision relating to the tolling of filing period because of payments of compensation made on account of death of covered person. *Id.*

§ 36-502. Exceptions.

NOTES TO DECISIONS

Independent contractor

Though real estate broker worked on commission basis he was not independent contractor but was "employee", within workmen's compensation recovery limitations, of corporation which required him to attend sales meetings and, as directed, to check out possible listings and "sit" on specific property, to report on all sales transactions before they were "finalized," to comply with requirements, standards and methods of doing business established by corporation and to clear with corporation all prospective listings of property and all potential sales and who was furnished office, secretarial help, business card and car and advance on expenses and hospitalization and life insurance. *R. W. McGinniss v. Frederick W. Berens Sales, Inc., et ano.* (D.C. App. 1973, 308 A. 2d 765).

§ 36-503. Administrative expenses.

There are authorized to be appropriated such sums as may be necessary to pay the expenses incurred by the United States Department of Labor in the administration of this chapter. (May 17, 1928, ch. 612, § 3, as added Oct. 26, 1973, Pub. L. 93-140, § 19, 87 Stat. 507.)

APPROPRIATIONS

See note under § 1-226a.

§ 36-504. District employees—Transfer of functions with respect to processing claims.

All functions of the Secretary under chapter 81 of title 5 of the United States Code, with respect to the processing of claims filed by employees of the government of the District for compensation for work injuries, are transferred to and shall be exercised by the Mayor, effective the day after the day on which the District establishes an independent personnel system or systems. (Dec. 24, 1973, Pub. L. 93-198, title II, § 204(e), 87 Stat. 783.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of Act May 17, 1928, ch. 612, as amended, which comprises this chapter.

Section is also set out as a note under 5 U.S.C 8101.

EFFECTIVE DATE

Section effective July 1, 1974, see sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

TRANSFER OF EXISTING PERSONNEL, PROPERTY, RECORDS, AND FUNDS

See note under § 36-701.

CROSS REFERENCE

District government merit system, see § 1-162.

Chapter 6.—PAYMENT AND COLLECTION OF WAGES

§ 36-601. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 36-603. Payment of wages upon discharge or resignation of employee and upon suspension of work—
Liability of employer for failure to pay wages in accordance with this section.

NOTES TO DECISIONS

Liquidated damages

Wage payment law rather than minimum wage law (§ 36-401 et seq.) was applicable to former employee's claims against former employer for allegedly unpaid wages and, therefore denial of former employee's claim for liquidated damages, attorneys' fees and costs in reliance on the minimum wage law was improper, where former employee did not quarrel with hourly rate but sued on basis of wages allegedly due for certain hours of work. *D. E. Klingaman v. Holiday Tours, Inc.* (D.C. App. 1973, 309 A. 2d 54).

§ 36-606. Enforcement, records and subpoenas.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Appealable order

Since order of Minimum Wage and Industrial Safety Board advising employer that it owed and should pay a former employee all commissions earned prior to termination of his employment was enforceable only through criminal prosecution or civil litigation in which issues of fact or law would be determined entirely upon the pleadings and trial record, and not upon the proceedings before the Board, Board's order was not an "appealable order" under the Administrative Procedure Act. *Sonderling Broadcasting Corporation v. District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1974, 315 A. 2d 828).

§ 36-608. Employees' remedies.

NOTES TO DECISIONS

Liquidated damages

Wage payment law rather than minimum wage law (§ 36-401 et seq.) was applicable to former employee's claims against former employer for allegedly unpaid wages and, therefore denial of former employee's claim for liquidated damages, attorneys' fees and costs in reliance on the minimum wage law was improper, where former employee did not quarrel with hourly rate but sued on basis of wages allegedly due for certain hours of work. *D. E. Klingaman v. Holiday Tours, Inc.* (D.C. App. 1973, 309 A. 2d 54).

§ 36-609. Commissioner may delegate functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—PUBLIC EMPLOYMENT SERVICE

Sec.

36-701. Public employment service—Establishment by Mayor—Transfer of functions of existing employment service.

§ 36-701. Public employment service—Establishment by Mayor—Transfer of functions of existing employment service.

(a) All functions of the Secretary of Labor (hereafter in this section referred to as the "Secretary") under section 3 of the Act (29 U.S.C. 49b) entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49-49k), with respect to the maintenance of a public employment service for the District, are transferred to the Mayor. After the effective date of this transfer, the Secretary shall maintain with the District the same relationship with respect to a public employment service in the District, including the financing of such service, as he has with the States (with respect to a public employment service in the States) generally.

(b) The Mayor is authorized and directed to establish and administer a public employment service in the District and to that end he shall have all necessary powers to cooperate with the Secretary in the same manner as a State under the Act of June 6, 1933, specified in subsection (a). (Dec. 24, 1973, Pub. L. 93-198, title II, § 204(a), (b), 87 Stat. 783.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Subsec. (a) of this section is also set out as a note under 29 U.S.C. 49.

EFFECTIVE DATE

Section effective July 1, 1974, see sec. 771(b) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

TRANSFER OF EXISTING PERSONNEL, PROPERTY, RECORDS, AND FUNDS

Section 204 of Act Dec. 24, 1973, Pub. L. 93-198, title II, 87 Stat. 784, as amended Aug. 29, 1974, Pub. L. 93-395, § 1(1), 88 Stat. 793, provided in part:

"(f) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available in connection with functions transferred to the Commissioner [Mayor] by the provisions of this section, as the Director of the Federal Office of Management and Budget shall determine, are authorized to be transferred from the Secretary to the Commissioner [Mayor].

"(g) Any employee in the competitive service of the United States transferred to the government of the District under the provisions of this section shall retain all the rights, benefits, and privileges pertaining thereto held prior to such transfer."

TITLE 37.—LIBRARIES

Chapter 1.—PUBLIC LIBRARIES

§ 37-101. Public library established—Authority of Commissioner—Acceptance of gifts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 37-104. Board of trustees—Appointment and tenure.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 37-105. Duties—Librarian and employees—Annual report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 37-106. Submission of estimates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 38.—LIENS

Chapter 1.—MECHANICS, MATERIALMEN, AND CONTRACTORS

§ 38-101. Mechanic's lien.

NOTES TO DECISIONS

Amount of lien

Once mechanic's lien arises, this section operates to prescribe amount thereof and if lien arises from work performed pursuant to valid contract, there is no dispute over fact that labor and materials have been expended on and to benefit of building in accordance with contract and no expenditure is challenged as unreasonable, contract price is measure of liability upon enforcement of the lien and no further proof of expenditures or proffer of reasonableness is required to make lien enforceable. *M. E. Sloane et ux. v. Malcolm Price, Inc.* (D.C. App. 1975, 339 A. 2d 43).

On appeal from judgment to enforce mechanic's lien based on cost-plus contract, record does not show aggregate cost upon face of account to be so excessive and unreasonable as to suggest gross negligence or fraud and does not justify compelling contractor to show reasonableness. *Id.*

In suit to enforce mechanic's lien based on cost-plus contract, evidence sustains finding that estimated total cost figure contained in contract was not a maximum. *Id.*

Statutory construction

Within provision of this section that once work on building is performed pursuant to contract, that structure becomes subject to lien "for the contract price agreed upon," "contract" is not limited to certain type of contract and includes cost-plus type contract. *M. E. Sloane et ux v. Malcolm Price, Inc.* (D.C. App. 1975, 339 A. 2d 43).

§ 38-102. Notice.

NOTES TO DECISIONS

Abandonment of work

Evidence sustains finding that abandonment of work under home improvement contract by plaintiff contractor did not occur prior to the beginning of three months period provided for filing of mechanic's lien and that no abandonment occurred prior to termination of mutual efforts to compromise, in proceeding by contractor to enforce mechanic's lien. *M. E. Sloane et ux. v. Malcolm Price, Inc.* (D.C. App. 1975, 339 A. 2d 43).

When contractor abandons project prior to completion, applicable time period for asserting mechanic's lien runs from date of abandonment. *Malcolm Price, Inc. v. M. E. Sloane et ux.* (D.C. App. 1973, 308 A. 2d 779).

§ 38-103. Subcontractor.

NOTES TO DECISIONS

Waiver

Mechanics' liens filed by subcontractor could not be enforced, where subcontractor released initial mechanics' liens after being informed that money deposited by property owner with title company would not be disbursed without such releases, and where title company then released some or all of the amount deposited, regardless of

whether property owner was still indebted to general contractor when subcontractor filed subsequent mechanics' liens against the property. *Hutchison Brothers Excavating Company, Inc. v. L. Dworman* (D.C. App. 1973, 307 A. 2d 760).

Where subcontractor upon filing of mechanics' liens demanded statement from property owner of terms of contract between itself and general contractor as required by statute, and such demand was never acted on by property owner, but where subcontractor released its mechanics' liens, subcontractor by releasing the liens waived its right to such statement. *Id.*

§ 38-107. Subcontractor entitled to know terms of contract.

NOTES TO DECISIONS

Waiver

Where subcontractor upon filing of mechanics' liens demanded statement from property owner of terms of contract between itself and general contractor as required by statute, and such demand was never acted on by property owner, but where subcontractor released its mechanics' liens, subcontractor by releasing the liens waived its right to such statement. *Hutchison Brothers Excavating Company, Inc. v. L. Dworman* (D.C. App. 1973, 307 A. 2d 760).

§ 38-110. How lien enforced.

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

§ 38-115. When suit to be commenced.

NOTES TO DECISIONS

Abandonment of work

When contractor abandons project prior to completion, applicable time period for asserting mechanic's lien runs from date of abandonment. *Malcolm Price, Inc. v. M. E. Sloane et ux.* (D.C. App. 1973, 308 A. 2d 779).

Chapter 2.—GARAGE KEEPERS AND LIVERYMEN

§ 38-205. Lien for storage, repairs and supplies for motor vehicles.

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

§ 38-206. Enforcement of lien by sale.

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

Chapter 3.—HOSPITALS

§ 38-302. Notice to be filed.

CROSS REFERENCE

Service by publication on nonresidents and absent defendants, see § 13-336.

TITLE 39.—MILITARY

Chapter 1.—COMPOSITION, ORGANIZATION, AND CONTROL

§ 39-103. Assessors to make list of persons liable to enrollment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 6.—ACTIVE MILITARY DUTY

§ 39-603. Suppression of riots.

When there is in the District of Columbia a tumult, riot, mob, or a body of men acting together by force with attempt to commit a felony or to offer violence to persons or property, or by force or violence to break and resist the laws, or when such tumult, riot, or mob is threatened, it shall be lawful for the Mayor of the District of Columbia, or for the United States marshal for the District of Columbia, or for the National Capital Service Director, to call on the commander-in-chief to aid them in suppressing such violence and enforcing the laws; the commander-in-chief shall thereupon order out so much and such portion of the militia as he may deem necessary to suppress the same, and no member thereof who shall be thus ordered out by proper authority for any such duty shall be liable to civil or criminal prosecution for any act done in the discharge of his military duty.

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(Mar. 1, 1889, 25 Stat. 778, ch. 328, § 45; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 48; Dec. 24, 1973, Pub. L. 93-198, title VII, § 739(d), 87 Stat. 826.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended section by inserting "or for the National Capital Service Director," immediately after "United States marshal for the District of Columbia,".

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the amendment to this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

Chapter 8.—PAY AND ALLOWANCES

§ 39-805. Annual estimates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 40.—MOTOR VEHICLES

Chapter 1.—REGISTRATION OF MOTOR VEHICLES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1-1443b, 47-1208.

§ 40-102. Registration of motor vehicles and trailers—Certificates — Tags—Duplicates—Dealers—Fees—Official and foreign vehicles and trailers—Transfers—Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-103. Fees classified and use of proceeds designated.

* * * * *

(b) Class A: For each passenger vehicle, including passenger vehicles licensed under paragraph (d) of section 47-2331.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of which is less than three thousand four hundred pounds, \$40; three thousand four hundred pounds or more, \$67.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class B. For each truck, tractor, and passenger-carrying vehicle for hire having a seating capacity of eight passengers or more in addition to the driver or operator with the exception of passenger vehicles licensed under paragraph (b) of section 47-2331.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of the chassis, plus the weight of the cab and body, is less than three thousand pounds, \$71; three thousand pounds or more but less than four thousand pounds, \$79; four thousand pounds or more but less than five thousand pounds, \$92; five thousand pounds or more but less than six thousand pounds, \$107; six thousand pounds or more but less than seven thousand pounds, \$122; seven thousand pounds or more but less than eight thousand pounds, \$132; eight thousand pounds or more but less than nine thousand pounds, \$150; nine thousand pounds or more but less than ten thousand pounds, \$171; ten thousand pounds or more but less than twelve thousand pounds, \$218; twelve thousand pounds or more but less than fourteen thousand pounds, \$225; fourteen thousand pounds or more but less than sixteen thousand pounds, \$306; sixteen thousand pounds or more, \$359: *Provided*, That in determining the total weight of a vehicle subject to the provisions of this clause, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible per-

sonal property under subsection (e) of this section.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class C. For each trailer, when the manufacturer's shipping weight of the chassis, plus the weight of the body, is less than five hundred pounds, \$15; five hundred pounds or more but less than one thousand pounds, \$22; one thousand pounds or more but less than one thousand five hundred pounds, \$36; one thousand five hundred pounds or more but less than two thousand five hundred pounds, \$58; two thousand five hundred pounds or more but less than three thousand five hundred pounds, \$82; three thousand five hundred pounds or more but less than six thousand pounds, \$107; six thousand pounds or more but less than eight thousand pounds, \$132; eight thousand pounds or more but less than ten thousand pounds, \$164; ten thousand pounds or more but less than twelve thousand pounds, \$218; twelve thousand pounds or more but less than sixteen thousand pounds, \$271; sixteen thousand pounds or more, \$323: *Provided*, That in determining the total weight of a trailer subject to the provisions of this Class C, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

Class D. For each motorcycle, motor bicycle, motor tricycle, and motor wheel, \$16.

Class E. For each motor vehicle classified by the Commissioner or his designated agent as an antique motor vehicle on the basis of a finding that such vehicle was manufactured prior to January 1, 1930, and is owned solely as a collector's item, with its use limited to participation in club activities, exhibits, tours, parades, and similar uses, but in no event for general transportation, \$7.

Class F. For dealers' identification tags, first set of tags, for \$40, and \$14 for each additional set.

Class G. For each motor vehicle propelled by fuel not subject to taxation under chapter 19 of title 47, and motor vehicles propelled by any means other than motor fuels as defined in said chapter, double the fees provided in this subsection for classes A through D.

* * * * *

(d) Twenty-five per centum of the gross proceeds from fees payable under this title shall be paid into the Metrobus Fund established under section 1-1443b. The remainder of the proceeds from fees payable under this title shall be divided between the General Fund and the Highway Fund. The Council of the District of Columbia shall determine the percentage of such remainder which shall be deposited to the credit of the General Fund of

the District of Columbia, except that the percentage of such remainder deposited to the credit of the General Fund shall be not less than forty-two per centum or more than forty-seven per centum of such remainder. The amounts of such remainder not deposited to the credit of the General Fund, along with specified moneys collected from the motor-vehicle-fuel tax, and specified amounts of fees charged for the titling of motor vehicles and trailers, including specified amounts of fees charged for the issuance of permits to operate motor vehicles, shall be appropriated and used solely and exclusively for—

(1) construction, reconstruction, improvement, and maintenance of public highways, including the necessary administrative expenses in connection therewith;

(2) the expenses of the office of the director of vehicles and traffic incident to the regulation and control of traffic and the administration of the same; and

(3) the expenses necessarily involved in the police control, regulation, and administration of traffic upon the highways, except that the total amount to be expended under this item shall not exceed 15 per centum of the total payment appropriated for pay and allowances of officers and members of the Metropolitan Police force.

* * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title I, § 101, 22 DCR 2091.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Act Oct. 21, 1975, D.C. Law 1-23, made the following amendments:

(1) In the paragraph designated "Class A" of subsection (b) (relating to registration fees for passenger motor vehicles) struck out "\$30" and "\$50", and inserted in lieu thereof "\$40" and "\$67", respectively.

(2) In the paragraph designated "Class B" of subsection (b) (relating to registration fees for trucks, tractors and certain commercial motor vehicles) struck out "\$53", "\$59", "\$69", "\$80", "\$91", "\$99", "\$112", "\$128", "\$163", "\$191", "\$229", and "\$269", and inserted in lieu thereof "\$71", "\$79", "\$92", "\$107", "\$122", "\$132", "\$150", "\$171", "\$218", "\$225", "\$306", and "\$359", respectively.

(3) In the paragraph designated "Class C" of subsection (b) (relating to registration fees for trailers), struck out "\$11", "\$16", "\$27", "\$43", "\$61", "\$80", "\$99", "\$123", "\$163", "\$203", and "\$243", and inserted in lieu thereof "\$15", "\$22", "\$36", "\$58", "\$82", "\$107", "\$132", "\$164", "\$218", "\$271", and "\$323, respectively.

(4) In the paragraph designated "Class D" of subsection (b) (relating to registration fees for motorcycles, motor bicycles, motor tricycles and motor wheels) struck out "\$12", and inserting in lieu thereof "\$16".

(5) In the paragraph designated "Class E" of subsection (b) (relating to registration fees for antique motor vehicles) struck out "\$5" and inserted in lieu thereof "\$7".

(6) The paragraph designated "Class F" of subsection (b) (relating to registration fees for dealer's identification tags) struck out "\$30", and "\$10", and inserted in lieu thereof "\$40", and "\$14", respectively.

(7) Amended subsection (d) generally.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 801(a) of act Oct. 21, 1975, D.C. Law 1-23, provided: "The amendments made by sections 101, 102, 201, and 203 [amending §§ 40-103, 40-603, 47-1901, and 45-723, respectively] shall take effect on the first day of the first month after the day this act becomes law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

MAYOR TO SUBMIT LEGISLATIVE PROPOSAL

Section 104(a) of act Oct. 21, 1975, D.C. Law 1-23, provided: "The Mayor of the District of Columbia shall submit to the Council of the District of Columbia, no later than January 1, 1976, proposed legislation detailing a three-tier registration fee for automobiles in class A of section 3(b) of Title IV of the District of Columbia Revenue Act of 1937 (D.C. Code, sec. 40-103) to replace the existing two-tier structure, with disproportionately lower fee increases for lighter weight, compact and subcompact automobiles."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40-202.

§ 40-104. Unlawful acts—Penalty.

NOTES TO DECISIONS

Investigatory stops

Actions of police officers in stopping rented vehicle in order to determine if the defendant had proper license and rental agreement was reasonable, and seizure of pistol that was in plain view of officer who was looking at interior of car with flashlight while other officer was engaged in conversation with defendant did not violate the Fourth Amendment. *R. F. Palmore v. United States* (D.C. App. 1972, 290 A. 2d 573; aff'd 93 S. Ct. 1670, 411 U.S. 389).

§ 40-105. Provisions not affected.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—INSPECTION

§ 40-201. Annual inspection of motor vehicles—Inspection fee.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-205. Vehicles not inspected, or unsafe.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-207. Regulations by Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—OPERATORS' PERMITS

§ 40-301. Operators' permits—Application—Examination—Periods for which issued—Fee—Lost permits—Age requirements—Provisions affecting personnel of armed forces of United States and foreign nations—Contents of permits—Possession of operator—Operation without permit prohibited.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Driver education program of the public schools, see § 31-1119.

NOTES TO DECISIONS

Arrest

Where, after being stopped for having run stop sign, defendant was unable to furnish officers with either driver's permit or vehicle registration and police were unable to verify ownership by other means because of computer malfunction, police had probable cause to believe that vehicle was being used without authorization and to arrest defendant on that basis. *R. A. Botts v. United States* (D.C. App. 1973, 310 A. 2d 237).

Search and seizure

Search of defendant's person after arrest for driving without a permit was not unlawful. *C. H. Spencer v. United States* (D.C. App. 1974, 316 A. 2d 331).

Where defendant was arrested for the petty offense of driving with a learner's permit while unaccompanied by a licensed driver and was frisked at scene and no weapons were found, arresting officer who then took defendant to the station and instead of informing defendant, who had \$171 cash in his pockets, of his right to post \$50 collateral, as prescribed for the petty offense, and leave the precinct station, required defendant as a booking inventory procedure to empty his pockets, conducted an unreasonable search rendering narcotics seized from pocket inadmissible. *United States v. H. E. Mills* (1972, 472 F. 2d 1231, 153 U.S. App. D.C. 156).

Informing person arrested for petty offense of his option to post collateral and giving him an opportunity to exercise that option is a necessary condition to a thorough and complete search that is conducted only as incident to needs of stationhouse detention. *Id.*

When person is charged with a collateral-type petty offense under which he rightfully has opportunity to post collateral and avoid further detention and there is no probable cause to believe that he committed a more serious crime, police may not engage in an inventory search of offender or an equivalent direction that he empty his pockets and seek to support it on ground of holding him in further confinement, unless at a minimum he was notified of his opportunity to post collateral and refused or was unable to do so. *Id.*

§ 40-302. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Nonresidents—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Evidence

Where driver's counsel at license revocation hearing had not had transcript of testimony given at earlier license suspension hearing and hearing officer at revocation hearing had unequivocally advised counsel that urinalysis had

showed .21 ethyl alcohol, driver was entitled to challenge on appeal from revocation a police officer's testimony, given at suspension hearing, that urinalysis report showed "zero-two-one, ethyl alcohol," on ground that it was not clear whether he meant .021 or 0.21, although counsel had failed to complain at revocation hearing during which hearing officer read statement of facts, including the police officer's testimony. *M. T. Reap v. Department of Motor Vehicles of the District of Columbia* (D.C. App. 1973, 305 A. 2d 513).

Where hearing officer at license revocation hearing had not examined laboratory urinalysis report which police officer, at earlier suspension hearing, had testified showed "zero-two-one, ethyl alcohol," and record did not contain the report so that it was not clear whether witness meant .021 or 0.21, officer's testimony concerning the urinalysis should not have been accorded any probative weight and, inasmuch as hearing officer expressly relied upon that testimony in revoking driver's license, revocation order must be reversed and case remanded for new hearing. *Id.*

Procedural requirements

Procedural due process requires that hearing be held prior to permanent suspension of driver's license. *A. Quick v. Department of Motor Vehicles of the District of Columbia* (D.C. App. 1975, 331 A.2d 319).

Driver's license revocation proceeding is a "contested case" and, therefore, is controlled by Administrative Procedure Act (§§ 1-1501 et seq.). *Id.*

Search and seizure

Where officer had probable cause to arrest defendant for operating a motor vehicle after revocation of his operator's permit and effected a full custody arrest, search of defendant's person without search warrant, inspection of crumpled cigarette package found on defendant's person and seizure of heroin capsules found in the package were permissible even though officer did not indicate any subjective fear of defendant and did not suspect that defendant was armed. *United States v. W. Robinson, Jr.* (1973, 94 S.Ct. 467, 414 U.S. 218; rev'g 471 F. 2d 1082, 153 U.S. App. D.C. 114).

Following arrest of defendant under warrant of operating motor vehicle after revocation of operator's permit, police officer was authorized to conduct "full field search" of defendant, remove envelope from pocket inside coat and open it to determine if it contained narcotics. *United States v. K. C. Simmons* (D.C. App. 1973, 302 A. 2d 728).

Absent "special circumstances," a police officer has no right to search either the person or the vehicle incident to a lawful arrest for violation of a mere motor vehicle regulation. *United States v. W. Robinson, Jr.* (1972, 471 F. 2d 1082, 153 U.S. App. D.C. 114; rev'd 94 S. Ct. 467, 414 U.S. 218).

§ 40-303. Nonresidents exempt from registration—Period of exemption.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 4.—MOTOR VEHICLE SAFETY RESPONSIBILITY

§ 40-417. Short title.

NOTES TO DECISIONS

Purpose

Motor Vehicle Safety Responsibility Act (this chapter) is a remedial statute designed to protect, so far as possible, innocent persons injured by negligent operation of motor vehicles. *Government Employees Insurance Company v. Stonewall Casualty Company* (D.C. App. 1973, 301 A. 2d 72).

§ 40-418. Definitions.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-419. Administration.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-420. Review by Commissioner.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-421. Abstract of operating record.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-422. Information regarding financial responsibility to be furnished person injured.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-423. Service of process on nonresident.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Construction**

Long-arm statute (§ 13-401 et seq.) enacted as part of Court Reorganization Act of 1970 exists independently of Motor Vehicle Safety Responsibility Act (this chapter) as an alternative, independent method for acquiring in personam jurisdiction over a nonresident motorist. *Liberty Mutual Insurance Company et ano. v. W. Burgess* (D.C. App. 1973, 308 A.2d 775).

§ 40-424. Operator deemed to be agent of owner.**NOTES TO DECISIONS****Husband and wife**

Interspousal immunity which was conferred on husband-driver, under District of Columbia law, did not extend to automobile owner, sued for injuries sustained by passenger-wife. *L. T. Edmunds v. J. A. Edmunds et ano.* (1972, 353 F. Supp. 287).

§ 40-425. Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D.C.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-426. Report of accident required.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-427. Form of accident report.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-429. Additional information concerning accident to be furnished on request.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-430. Suspension of license and registration for failure to report.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-433. Determination of the amount of security.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-434. Exceptions to requirements as to security and suspension.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-435. Automobile liability policy or bond—Requirements.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-436. Security—Form and amount.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-437. Failure to deposit security—Suspensions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-438. Release from liability.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-440. Agreements for payment of damages.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-442. Termination of security requirement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-443. Duration of suspension.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-444. Nonresidents—Unlicensed drivers—Unregistered vehicles—Accidents in other States.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-445. Commissioner authorized to decrease amount of security.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-446. Correction of Commissioner's action within one year.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-447. Disposition of security.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-448. Return of deposit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-449. Matters not to be evidence in civil suits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-453. Suspension of license and registration for certain convictions—Effect of proof of financial responsibility—Vehicles owned or leased by the United States, a State, or a political subdivision thereof—Suspension for out of District convictions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-454. Duration of suspension—Giving and maintenance of proof of financial responsibility.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-455. Suspension of unlicensed or licensed person after certain convictions—Proof of financial responsibility required—Certificate of conviction to be forwarded to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-456. Suspension of nonresidents' operating privilege—Duration.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-457. Report by courts of nonpayment of judgments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-458. Judgment against a nonresident—Transmittal of copy to license and registration official of defendant's State.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-459. Suspension for nonpayment of judgment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-461. Consent by judgment creditor to allowance of license, registration, or operating privileges to judgment debtor.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-462. Commissioner's finding that an insurer is obligated to pay judgment—Effect of finding—License, registration and operating privileges in the event of a finding.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-466. Installment payment of judgments—Default.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-467. Breach of agreement to pay in installments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-470. Certificate of insurance as proof.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Estoppel

Automobile liability insurer's erroneous filing of certificate of insurance with Department of Motor Vehicles in accordance with Motor Vehicle Safety Responsibility Act (this chapter), even though insured had not renewed the policy, estopped insurer from denying existence of policy meeting the minimum requirements of the Act when insured was involved in an accident after his original policy had expired. *Government Employees Insurance Company v. Stonewall Casualty Company* (D.C. App. 1973, 301 A. 2d 72).

§ 40-471. Certificate filed by nonresident as proof of financial responsibility.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-472. Default by nonresident insurance carrier.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-473. "Motor-vehicle liability policy" defined.

NOTES TO DECISIONS

Estoppel

Automobile liability insurer's erroneous filing of certificate of insurance with Department of Motor Vehicles in accordance with Motor Vehicle Safety Responsibility Act (this chapter), even though insured had not renewed the policy, estopped insurer from denying existence of policy meeting the minimum requirements of the Act when insured was involved in an accident after his original policy

had expired. *Government Employees Insurance Company v. Stonewall Casualty Company* (D.C. App. 1973, 301 A. 2d 72).

§ 40-474. Notice of cancellation or termination of certified policy.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Estoppel

Automobile liability insurer's erroneous filing of certificate of insurance with Department of Motor Vehicles in accordance with Motor Vehicle Safety Responsibility Act (this chapter), even though insured had not renewed the policy, estopped insurer from denying existence of policy meeting the minimum requirements of the Act when insured was involved in an accident after his original policy had expired. *Government Employees Insurance Company v. Stonewall Casualty Company* (D.C. App. 1973, 301 A. 2d 72).

§ 40-476. Surety bond as proof of financial responsibility.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-477. Bond a lien against scheduled real estate—Recording—Notice.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-479. Deposit of money with Commissioner—Certificate—Evidence of no unsatisfied judgments.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-481. Owner of a motor vehicle may give proof for others.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-482. Substitution of proof.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-483. Requirement of other proof of financial responsibility—Prior proof—Suspension.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-484. Duration of proof—Cancellation or return of proof.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-485. Transfer of registration to defeat purpose of chapter.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-486. Surrender of license and registration.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-488. Erroneous report—Forged signature—Filing forged evidence of proof of financial responsibility—Penalty—False swearing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-494. Self-insurers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-498. Interpretation of provisions of chapter.

NOTES TO DECISIONS

Purpose

Motor Vehicle Safety Responsibility Act (this chapter) is a remedial statute designed to protect, so far as possible, innocent persons injured by negligent operation of motor vehicles. *Government Employees Insurance Company v. Stonewall Casualty Company* (D.C. App. 1973, 301 A. 2d 72).

Chapter 5.—PUBLIC-OWNED VEHICLES

Sec.

40-501a. Official use of motor vehicles.

40-504. Omitted.

§ 40-501a. Official use of motor vehicles.

All passenger motor vehicles and watercraft owned by the District of Columbia shall be operated and utilized in conformity with section 5 of the Act of July 16, 1914, as amended by section 16 of the Act of August 2, 1946 (31 U.S.C. 638a), and shall be under the direction and control of the Mayor of the District of Columbia. The Mayor is authorized to alter or change the assignment or direct the alteration or interchangeable use of any passenger motor vehicles or watercraft by officers and employees of the District of Columbia except as otherwise provided in such Act. Limitations on the official use of passenger motor vehicles, as set out in section 5 of such Act, shall not apply to the Mayor or, with the approval of the Mayor, to officers and employees of the District government the character of whose duties make such transportation necessary. (Oct. 26, 1973, Pub. L. 93-140, § 2, 87 Stat. 504.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

APPROPRIATIONS

See note under § 1-226a.

PRIOR PROVISIONS

Similar provisions were contained in the following prior District of Columbia appropriation acts:

1974—Aug. 14, 1973, Pub. L. 93-91, § 7, 87 Stat. 309.
 1973—July 10, 1972, Pub. L. 92-344, § 8, 86 Stat. 455.
 1972—Dec. 18, 1971, Pub. L. 92-202, § 9, 85 Stat. 686.
 1971—July 16, 1970, Pub. L. 91-337, § 9, 84 Stat. 436.
 1970—Dec. 24, 1969, Pub. L. 91-155, § 10, 83 Stat. 432.
 1969—Aug. 10, 1968, Pub. L. 90-473, § 10, 82 Stat. 699.
 1968—Nov. 13, 1967, Pub. L. 90-134, § 10, 81 Stat. 440.
 1967—Nov. 2, 1966, 80 Stat. 1173, Pub. L. 89-743, § 10.
 1966—July 16, 1965, 79 Stat. 242, Pub. L. 89-75, § 10.
 1965—Aug. 22, 1964, 78 Stat. 592, Pub. L. 88-479, § 10.
 1964—Dec. 30, 1963, 77 Stat. 839, Pub. L. 88-252, § 10.
 1963—Oct. 23, 1962, 76 Stat. 1154, Pub. L. 87-867, § 10.
 1962—Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, § 10.
 1961—Apr. 8, 1960, 74 Stat. 30, Pub. L. 86-412, § 10.
 1960—July 23, 1959, 73 Stat. 238, Pub. L. 86-104, § 10.
 1959—Aug. 6, 1958, 72 Stat. 511, Pub. L. 85-594, § 10.
 1958—June 27, 1957, 71 Stat. 205, Pub. L. 85-61, § 10.
 1957—June 29, 1956, 70 Stat. 453, ch. 479, § 12.
 1956—July 5, 1955, 69 Stat. 263, ch. 272, § 12.
 1955—July 1, 1954, 68 Stat. 395, ch. 449, § 13.
 1954—July 31, 1953, 67 Stat. 295, ch. 299, § 14.
 1953—July 5, 1952, 66 Stat. 391, ch. 576, § 14.
 1952—Aug. 3, 1951, 65 Stat. 173, ch. 292, § 14.
 1951—July 18, 1950, 64 Stat. 361, ch. 467, § 1.
 1950—June 29, 1949, 63 Stat. 316, ch. 279, § 1.
 1949—June 19, 1948, 62 Stat. 551, ch. 555, § 1.
 1948—July 25, 1947, 61 Stat. 440, ch. 324, § 1.
 1947—July 9, 1946, 60 Stat. 516, ch. 544, § 1.
 1946—June 30, 1945, 59 Stat. 287, ch. 209, § 1.
 1945—June 28, 1944, 58 Stat. 524, ch. 300, § 1.
 1944—July 1, 1943, 57 Stat. 318, ch. 184, § 1.
 1943—June 27, 1942, 56 Stat. 429, ch. 452, § 1.
 1942—July 1, 1941, 55 Stat. 504, ch. 271, § 1.
 1941—June 12, 1940, 54 Stat. 312, ch. 333, § 1.
 1940—July 15, 1939, 53 Stat. 1009, ch. 281, § 1.
 1939—Apr. 4, 1938, 52 Stat. 162, ch. 62, § 1.
 1938—June 29, 1937, 50 Stat. 364, ch. 403, § 1.
 1937—June 23, 1936, 49 Stat. 1859, ch. 726, § 1.
 1936—June 14, 1935, 49 Stat. 345, ch. 241, § 1.
 1935—June 4, 1934, 48 Stat. 851, ch. 389, § 1.
 1934—June 16, 1933, 47 Stat. 226, ch. 93, § 1.
 1933—June 29, 1932, 47 Stat. 348, ch. 308, § 1.
 1932—Feb. 23, 1931, 46 Stat. 1382, ch. 282, § 1.
 1931—July 3, 1930, 46 Stat. 955, ch. 848, § 1.

1930—Feb. 25, 1929, 45 Stat. 1267, ch. 314, § 1.
 1929—May 21, 1928, 45 Stat. 650, ch. 659, § 1.

USE OF CHAUFFEURS

Section 10 of the District of Columbia Appropriation Act, 1975 (Aug. 31, 1974, Pub. L. 93-405, 88 Stat. 828) provided:

"No part of any funds appropriated by this Act shall be used to pay the compensation (whether by contract or otherwise) of any individual for performing services as a chauffeur or driver for any designated officer or employee of the District of Columbia government (other than the Commissioner of the District of Columbia, Chief of Police and Fire Chief), or for performing services as a chauffeur or driver of a motor vehicle assigned for the personal or individual use of any such officer or employee (other than the Commissioner of the District of Columbia, Chief of Police and Fire Chief). No part of any funds appropriated by this Act, in excess of \$12,000 in the aggregate, shall, in any fiscal year, be used to pay the compensation (whether by contract or otherwise) of individuals for performing services as a chauffeur or driver for the Commissioner of the District of Columbia, or for performing services as a chauffeur or driver of a motor vehicle assigned for the personal or individual use of the Commissioner of the District of Columbia."

Similar provisions were contained in the following prior appropriation acts:

1974—Aug. 14, 1973, Pub. L. 93-91, § 13, 87 Stat. 310.
 1973—July 10, 1972, Pub. L. 92-344, § 14, 86 Stat. 455.
 1972—Dec. 18, 1971, Pub. L. 92-202, § 16, 85 Stat. 687.

§ 40-504. Omitted.

This section, which prohibited transfer of motor vehicles from the police and fire departments to any other branch of the District government, is omitted as it was not continued by the District of Columbia Appropriation Act, 1975. The section was repeated in the District of Columbia Appropriation Acts listed below through the 1961 Act (Pub. L. 86-412). Thereafter, the section was not repeated, but appears to have been continued by the 1962 through the 1974 Appropriation Acts listed below which provided in part: "Except as otherwise provided herein, limitations and legislative provisions contained in the District of Columbia Appropriation Act, 1961, shall be applicable during the current fiscal year . . .".

1974—Aug. 14, 1973, Pub. L. 93-91, § 10, 87 Stat. 310.
 1973—July 10, 1972, Pub. L. 92-344, § 11, 86 Stat. 455.
 1972—Dec. 18, 1971, Pub. L. 92-202, § 13, 85 Stat. 687.
 1971—July 16, 1970, Pub. L. 91-337, § 14, 84 Stat. 437.
 1970—Dec. 24, 1969, Pub. L. 91-155, § 15, 83 Stat. 433.
 1969—Aug. 10, 1968, Pub. L. 90-473, § 15, 82 Stat. 700.
 1968—Nov. 13, 1967, Pub. L. 90-134, § 15, 81 Stat. 441.
 1967—Nov. 2, 1966, 80 Stat. 1173, Pub. L. 89-743, § 15.
 1966—July 16, 1965, 79 Stat. 242, Pub. L. 89-75, § 15.
 1965—Aug. 22, 1964, 78 Stat. 593, Pub. L. 88-479, § 15.
 1964—Dec. 30, 1963, 77 Stat. 840, Pub. L. 88-252, § 15.
 1963—Oct. 23, 1962, 76 Stat. 1155, Pub. L. 87-867, § 15.
 1962—Sept. 21, 1961, 75 Stat. 564, Pub. L. 87-265, § 15.
 1961—Apr. 8, 1960, 74 Stat. 30, Pub. L. 86-412, § 10.
 1960—July 23, 1959, 73 Stat. 238, Pub. L. 86-104, § 10.
 1959—Aug. 6, 1958, 72 Stat. 511, Pub. L. 85-594, § 10.
 1958—June 27, 1957, 71 Stat. 205, Pub. L. 85-61, § 10.
 1957—June 29, 1956, 70 Stat. 453, ch. 479, § 12.
 1956—July 5, 1955, 69 Stat. 263, ch. 272, § 12.
 1955—July 1, 1954, 68 Stat. 395, ch. 449, § 13.
 1954—July 31, 1953, 67 Stat. 295, ch. 299, § 14.
 1953—July 5, 1952, 66 Stat. 391, ch. 576, § 14.
 1952—Aug. 3, 1951, 65 Stat. 173, ch. 292, § 14.
 1951—July 18, 1950, 64 Stat. 361, ch. 467, § 1.
 1950—June 29, 1949, 63 Stat. 316, ch. 279, § 1.
 1949—June 19, 1948, 62 Stat. 551, ch. 555, § 1.
 1948—July 25, 1947, 61 Stat. 441, ch. 324, § 1.
 1947—July 9, 1946, 60 Stat. 516, ch. 544, § 1.
 1946—June 30, 1945, 59 Stat. 287, ch. 209, § 1.
 1945—June 28, 1944, 58 Stat. 524, ch. 300, § 1.
 1944—July 1, 1943, 57 Stat. 318, ch. 184, § 1.
 1943—June 27, 1942, 56 Stat. 429, ch. 452, § 1.
 1942—July 1, 1941, 55 Stat. 505, ch. 271, § 1.
 1941—June 12, 1940, 54 Stat. 312, ch. 333, § 1.
 1940—July 15, 1939, 53 Stat. 1010, ch. 281, § 1.
 1939—Apr. 4, 1938, 52 Stat. 162, ch. 62, § 1.
 1938—June 29, 1937, 50 Stat. 364, ch. 403, § 1.

1937—June 23, 1936, 49 Stat. 1859, ch. 726, § 1.
 1936—June 14, 1935, 49 Stat. 346, ch. 241, § 1.
 1935—June 4, 1934, 48 Stat. 851, ch. 389, § 1.
 1934—June 16, 1933, 48 Stat. 226, ch. 93, § 1.
 1933—June 29, 1932, 47 Stat. 348, ch. 308, § 1.
 1932—Feb. 23, 1931, 46 Stat. 1382, ch. 282, § 1.
 1931—July 3, 1930, 46 Stat. 955, ch. 848, § 1.
 1930—Feb. 25, 1929, 45 Stat. 1267, ch. 314, § 1.
 1929—May 21, 1928, 45 Stat. 650, ch. 659, § 1.

Chapter 6.—REGULATION OF TRAFFIC

Sec.

40-603-3. Deposit into Metrobus Fund of portion of proceeds from excise tax for issuance of motor vehicle title certificate.

CHAPTER REFERRED TO IN U.S. CODE

This chapter is referred to in section 212b of title 40, U.S. Code.

§ 40-602. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-603. Council authorized to make regulations—
 Department of Vehicles and Traffic—Director—
 Congressional tags—Titling—Arterial and boulevard
 highways—Council may prescribe penalties—
 Publication of regulations—Signs on highways—
 Prosecutions—Excise tax imposed for issuance of
 motor vehicle title certificates—Impoundment of
 motor vehicle for outstanding traffic violation
 notices.

(c) The Council of the District of Columbia is authorized and empowered to make and modify, and the Mayor is authorized and empowered to enforce, reasonable regulations in respect to brakes, horns, lights, mufflers, and other equipment, the inspection of the same; the registering, reregistering, titling, retitling, transferring of titles, and revocation of the certificate of title to motor vehicles and trailers: *Provided*, That congressional tags shall be issued by the Mayor under consecutive numbers, one to each Senator and Representative in Congress, to the elective officers and disbursing clerks of the Senate and the House of Representatives, the chief clerk of the Senate, the Parliamentarian of the Senate, the Parliamentarian of the House of Representatives, the attending physician of the Capitol, and the assistant secretaries (one for the majority and one for the minority of the Senate), for their official use, which, when used by them individually while on official business, shall authorize them to park their automobiles in any available curb space in the District of Columbia, except within fire plug, fire house, loading station, and loading platform limitations, and such congressional tags shall not be assigned to or used by others: *Provided further*, That such congressional tags shall be valid only for the Congress in which such tags are so issued, and it shall be unlawful to display such congressional tags for a period longer than thirty days after the opening of the next Congress.

Any person violating this section shall be fined not more than \$300 or imprisoned not more than ninety days, or both.

(j) In addition to the fees and charges levied under other provisions of this chapter, there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for a motor vehicle or trailer in the District, and for the issuance of every subsequent certificate of title for a motor vehicle or trailer in the District in the case of sale or resale thereof, at the rate of 6 per centum of the fair market value of such motor vehicle or trailer at the time such certificate is issued, as determined by the Assessor of the District of Columbia or his duly authorized representatives. As used in this section, the term "original certificate of title" shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer. No certificate of title so issued shall be delivered or furnished to the person entitled thereto until the tax has been paid in full. The Assessor of the District of Columbia may require every applicant for a certificate of title to supply such information as he deems necessary as to the time of purchase, the purchase price, and other information relative to the determination of the fair market value of any motor vehicle or trailer for which a certificate of title is required and issued. The issuance of certificates of title for the following motor vehicles and trailers shall be exempt from the tax imposed by this subsection:

(1) Motor vehicles and trailers owned by the United States or the District of Columbia.

(2) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining residences in the District.

(3) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining a business or businesses in the District. Except as hereinafter provided, it is not intended to exempt from the tax the issuance of certificates of title for motor vehicles and trailers owned by nonresidents who are engaged in business in the District at the time of their purchase or acquisition of such vehicles and trailers and who use such vehicles and trailers in the conduct of their District business or businesses.

(4) Motor vehicles and trailers owned by a utility or public service company for use in furnishing a commodity or service: *Provided*, That the receipts from furnishing such commodity or service are subject to a gross-receipts or mileage tax in force in the District of Columbia at the time of a certificate of title for any such vehicle or trailer is issued.

(5) New motor vehicles acquired from dealers as replacements for defective vehicles purchased new not more than sixty days prior to the date of such replacement, except that if the fair market value of any replacement vehicle is greater than that of the vehicle which it replaces, then the tax imposed by this section shall be paid on such difference in value. If the fair market value of any replacement vehicle is less than that of the vehicle which it replaces, then the Mayor or his designated agent is authorized to refund to the owner of the replacement vehicle an amount equal to the difference between the excise

tax paid on the defective vehicle and the excise tax paid on the replacement vehicle.

* * * * *

(As amended Nov. 1, 1973, Pub. L. 93-145, § 101, 87 Stat. 531; Oct. 21, 1975, D.C. Law 1-23, title I, § 102 (a), 22 DCR 2094.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended subsec. (j), by striking out "5 per centum" and inserting "6 per centum" in lieu thereof.

1973—Section 101 of Act Nov. 1, 1973, Pub. L. 93-145, amended subsec. (c) by striking out "Comptroller of the Senate," effective as of July 1, 1973.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(a) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 40-103.

MAYOR TO SUBMIT LEGISLATIVE PROPOSAL

Section 104(b) of act Oct. 21, 1975, D.C. Law 1-23, provided: "The Mayor of the District of Columbia shall submit to the Council of the District of Columbia, no later than January 1, 1976, proposed legislation detailing a restructured three-tier motor vehicle excise tax rate which provides for a substantially lower tax rate for lighter weight, compact and subcompact automobiles."

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1006, 1-1412, 1-1443b, 25-127, 40-102, 40-603-1, 40-603-3, 40-603b, 40-612, 43-907, 47-2331, 47-2333.

NOTES TO DECISIONS

Evidence

Where driver's counsel at license revocation hearing had not had transcript of testimony given at earlier license suspension hearing and hearing officer at revocation hearing had unequivocally advised counsel that urinalysis had showed .21 ethyl alcohol, driver was entitled to challenge on appeal from revocation a police officer's testimony, given at suspension hearing, that urinalysis report showed "zero-two-one, ethyl alcohol," on ground that it was not clear whether he meant .021 or 0.21, although counsel had failed to complain at revocation hearing during which hearing officer read statement of facts, including the police officer's testimony. *M. T. Reap v. Department of Motor Vehicles of the District of Columbia* (D.C. App. 1973, 305 A. 2d 513).

Where hearing officer at license revocation hearing had not examined laboratory urinalysis report which police officer, at earlier suspension hearing, had testified showed "zero-two-one, ethyl alcohol," and record did not contain the report so that it was not clear whether witness meant .021 or 0.21, officer's testimony concerning the urinalysis should not have been accorded any probative weight and, inasmuch as hearing officer expressly relied upon that testimony in revoking driver's license, revocation order must be reversed and case remanded for new hearing. *Id.*

Search and seizure

Where officer had probable cause to arrest defendant for operating a motor vehicle after revocation of his operator's permit and effected a full custody arrest, search of defendant's person without search warrant, inspection of crumpled cigarette package found on defendant's person and seizure of heroin capsules found in the package were

permissible even though officer did not indicate any subjective fear of defendant and did not suspect that defendant was armed. *United States v. W. Robinson, Jr.* (1973, 94 S.Ct. 467, 414 U.S. 218; rev'g 471 F. 2d 1082, 153 U.S. App. D.C. 114).

Absent "special circumstances," a police officer has no right to search either the person or the vehicle incident to a lawful arrest for violation of a mere motor vehicle regulation. *United States v. W. Robinson, Jr.* (1972, 471 F. 2d 1082, 153 U.S. App. D.C. 114; rev'd 94 S. Ct. 467, 414 U.S. 218).

Arresting officers did not have reasonable grounds to search a passenger in back seat of an automobile stopped during "rush hour" for speeding even if after automobile stopped they observed passenger move his right arm and shoulder as if to hide something or put something away, and a gun and heroin found in such search should have been suppressed pursuant to defendant's motions. *United States v. L. N. Page* (D.C. App. 1972, 298 A. 2d 233).

§ 40-603-2. Commissioner may enter into interstate agreement concerning enforcement of traffic laws:

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-603-3. Deposit into Metrobus Fund of portion of proceeds from excise tax for issuance of motor vehicle title certificate.

Notwithstanding any other provision of law, not less than one-sixth of the proceeds collected under section 40-603(j) shall be deposited into the Metrobus Fund established by section 1-1443b, together with such additional proceeds collected under section 40-603(j) as the Mayor of the District of Columbia may, in his discretion, deem to be appropriate and necessary. (Oct. 21, 1975, D.C. Law 1-23, title I, § 102(b), 22 DCR 2094.)

CODIFICATION

Section was not enacted as part of the District of Columbia Traffic Act, 1925, which comprises this chapter.

§ 40-604. Parking space for Members of Congress.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-604a. Parking of automobiles in Municipal Center—Regulations—Violations and penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-609. Fleeing from scene of accident—Driving under the influence of liquor or drugs.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-612. Convictions to be reported.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-616. Parking meters.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-617. Loitering by public cabs.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 7.—LIENS ON MOTOR VEHICLES OR TRAILERS**§ 40-705. Liens to be kept by recorder in director's office.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-715. Appropriation.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—REGULATION OF PARKING**§ 40-803. Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-804. Powers—Acquisition of property—Construction and maintenance—Leasing to private interests—Disposal of property—Establishment of rates—Miscellaneous rules and regulations—Parking meters.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-805. Motor-Vehicle Parking Agency—Creation and composition—Term—Powers.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-807. Records and data available—Additional surveys.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-809. Appropriations—Employment of director—Salaries of employees—Salaries of members of agency.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-809a. Acquisition of new parking facilities prohibited—Operation and expansion of existing facilities—Exempt facilities.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-810. Parking restrictions—Vehicles impounded—Penalties.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS**Removal of vehicle by individual**

Where defendant removed automobiles, which either had valid license tags or were virtually undamaged and could not therefore have reasonably have been regarded as abandoned, from parking lot under authorization by property managers, who did not have authority to contract with defendant for removal of such vehicles, defendant had no right to tow away such automobiles and thus was properly found guilty of taking property without right. *L. R. Fogle, Sr. v. United States* (D.C. App. 1975, 336 A.2d 833).

Chapter 9.—INSTALLMENT SALES OF MOTOR VEHICLES**§ 40-901. Definitions.****SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-902. Maximum finance charges—Computation—Proportionate adjustments—Investigation of economic conditions to determine finance charges—Regulations—Classification of parties—Waiver.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-903. Bonding of automobile dealers and applicants—Liability Insurance—Designation of Commissioner as agent for service of process—Limitation on bonds—Action on bonds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-904. Delegation of functions—Exception.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-905. Promulgation of regulations—Public hearings.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-906. False statements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-907. Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-908. Corporation counsel to conduct prosecutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-909. Additional authority granted to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—MOTOR VEHICLE OPERATORS—IMPLIED CONSENT TO BLOOD-ALCOHOL CONTENT TESTS

§ 40-1001. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-1005. Test refusal—Penalty—Incapacitated person—Use of evidence.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-1006. License revocation or denial order—Hearing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 40-1007. Judicial review.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 41.—PARTNERSHIPS

Chapter 3.—UNIFORM PARTNERSHIPS

PART IV

RELATIONS OF PARTNERS TO ONE ANOTHER

§ 41-317. Rules determining rights and duties of partners.

NOTES TO DECISIONS

Partnership agreement

Where partnership agreement to which plaintiff subscribed, stated that partnership agreement could be amended by majority approval of partners, there was no requirement of unanimous vote for the merger of partnership with another firm on ground that merger was a fundamental change in partnership. *J. E. Day v. Sidley & Austin et al.* (1975, 394 F. Supp. 986).

§ 41-320. Partner accountable as a fiduciary.

NOTES TO DECISIONS

Breach of fiduciary duty

Where there was no financial gain for defendant members of former partnership executive committee with respect to negotiations which led to merger with another partnership, and the remaining partners acquired no more power in firm as result of alleged withholding of information about merger from plaintiff former partner, there could be no breach of fiduciary duty between such defendant partners and plaintiff. *J. E. Day v. Sidley & Austin et al.* (1975, 394 F. Supp. 986).

§ 41-321. Right to an account.

NOTES TO DECISIONS

Entitlement to accounting

Where limited partner received monthly and annual financial report of the business, had not sought to examine the books of the partnership, had been apprised of the partnership's financial status, and did not contend that general partners had engaged in financial mismanagement of any kind, he is not entitled to an accounting. *C. Cafritz v. C. Cafritz et ano.* (D.C. App. 1975, 347 A. 2d 267).

PART VI

DISSOLUTION AND WINDING UP

§ 41-331. Dissolution by decree of court.

NOTES TO DECISIONS

Conduct prejudicial to business

Allegedly irreconcilable differences between limited partner and general partners concerning both retention of cash received upon liquidation of certain partnership assets and also concerning development of property owned by the partnership do not interfere with the carrying on the partnership business, particularly in light of the fact that, under the partnership agreement, the general partners had full power to control, operate and manage the business, so that the existence of the differences do not provide basis for dissolution. *C. Cafritz v. C. Cafritz et ano.* (D.C. App. 1975, 347 A. 2d 267).

§ 41-337. Rights of partners to application of partnership property.

NOTES TO DECISIONS

Joint tenancy, right of survivorship

Where sister and brother, as partners, owned realty and savings accounts as joint tenants, all of the four unities of joint tenancy were present, record showed no evidence that any partnership creditors' claims were not met by partnership assets which were not held in joint tenancy, there was no indication that partners did not understand and intend survivorship consequences of joint tenancy, and there was no evidence that they at any time intended to sever joint tenancy, such partnership assets became sister's by right of survivorship on brother's death and are subject to District of Columbia inheritance tax as part of sister's estate. *District of Columbia v. The Riggs National Bank of Washington, D.C., Executor etc.* (D.C. App. 1975, 335 A.2d 238).

Partnership agreement

Where new partnership agreement, which plaintiff signed and which resulted in the merger of two firms, set forth in some detail relationship between partners and structure of new firm and no mention was made of the firm's Washington office or plaintiff's status therein although special arrangements were specified for certain other partners, plaintiff had no contractual right to maintain his previous authority over Washington office after merger and hence had no cause of action based on breach of contract when he became only a cochairman of Washington office following merger. *J. E. Day v. Sidley & Austin et al.* (1975, 394 F. Supp. 986).

§ 41-338. Rights where partnership is dissolved for fraud or misrepresentation.

NOTES TO DECISIONS

Fraud

Since plaintiff, a former partner suing former partnership and partners thereof for fraud in connection with representations concerning merger with another partnership, had no right to remain chairman of Washington office under the new partnership agreement to which he subscribed, any alleged misrepresentation regarding his chairmanship of that office after merger could not form basis for cause of action for fraud. *J. E. Day v. Sidley & Austin et al.* (1975, 394 F. Supp. 986).

§ 41-339. Rules for distribution.

NOTES TO DECISIONS

Joint tenancy, right of survivorship

Where sister and brother, as partners, owned realty and savings accounts as joint tenants, all of the four unities of joint tenancy were present, record showed no evidence that any partnership creditors' claims were not met by partnership assets which were not held in joint tenancy, there was no indication that partners did not understand and intend survivorship consequences of joint tenancy, and there was no evidence that they at any time intended to sever joint tenancy, such partnership assets became sister's by right of survivorship on brother's death and are subject to District of Columbia inheritance tax as part of sister's estate. *District of Columbia v. The Riggs National Bank of Washington, D.C., Executor etc.* (D.C. App. 1975, 335 A. 2d 238).

TITLE 42.—PERSONAL PROPERTY

Chapter 1.—RECORDATION OF INSTRUMENTS

§ 42-107. False statements—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 43.—PUBLIC UTILITIES

Chapter 1.—DEFINITION OF TERMS AND APPLICATION OF LAW

§ 43-104. Service.

NOTES TO DECISIONS

Steam and chilled water

Coverage under the Public Utilities Act was sufficiently broad to encompass furnishing of steam and chilled water services pursuant to contract between utility and association representing hotel-office-apartment buildings complex since the consumers, i. e., tenants of the complex, received their heating and cooling needs from a third party, i. e., the utility, which was neither their landlord nor their cooperative management group and utility not only distributed but also manufactured the subject steam and chilled water and utility had joined with the association in actively seeking Commission regulation of such service area in the first instance. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A. 2d 778).

§ 43-121. Pipe-line company.

NOTES TO DECISIONS

Steam and chilled water

Coverage under the Public Utilities Act was sufficiently broad to encompass furnishing of steam and chilled water services pursuant to contract between utility and association representing hotel-office-apartment buildings complex since the consumers, i. e., tenants of the complex, received their heating and cooling needs from a third party, i. e., the utility, which was neither their landlord nor their cooperative management group and utility not only distributed but also manufactured the subject steam and chilled water and utility had joined with the association in actively seeking Commission regulation of such service area in the first instance. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A. 2d 778).

Chapter 2.—CREATION OF PUBLIC SERVICE COMMISSION—MEMBERS—C O U N S E L—EMPLOYEES

Sec.

43-201a. Function of Commission—Unjust, unreasonable, or discriminating charge prohibited.

43-205. People's Counsel—Appointment, compensation, qualifications—Personnel—Duties.

43-205a. Same; Appropriations.

§ 43-201. Members—Eligibility of Commissioners—Oath.

The Public Service Commission of the District of Columbia shall be composed of three commissioners appointed by the Mayor by and with the advice and consent of the Council, except that the members (other than the Commissioner of the District of Columbia) serving as commissioners of such Commission on January 1, 1975, by virtue of their appointment by the President, by and with the advice and consent of the Senate, shall continue to serve until the expiration of the terms for which they were so appointed. The member first appointed by the Mayor, by and with the advice and consent of the Council, on or after January 2, 1975, shall serve until

June 30, 1978. Each of the appointed commissioners shall receive a salary at the rate of \$7,500 per annum. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The commission shall at least biennially elect a chairman by a majority vote of its members. No Commissioner shall, during his term of office, hold any other public office. The Mayor shall furnish the Public Service Commission with suitable offices and quarters. No person shall be eligible to the office of Commissioner of the Public Service Commission of the District of Columbia who has not been a bona fide resident of the District of Columbia for a period of at least three years next preceding his appointment or who has voted or claimed residence elsewhere during such period. No person shall be eligible to the office of commissioner of said Public Service Commission who is, or who shall have been during a period of five years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia; or in any stock, bond, mortgage, security, or contract of any such public utility. If any such commissioner shall voluntarily become so interested, his office shall ipso facto become vacant; and if any such commissioner shall become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest, and if he fails to do so his office shall become vacant. Before entering upon the duties of his office each commissioner, the secretary of the commission, the counsel of the commission and every employee of said commission shall take and subscribe the constitutional oath of office, and shall in addition thereto make oath or affirmation before and file with the clerk of the Superior Court of the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(a); Dec. 15, 1926, 44 Stat. 920, ch. 8, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; July 29, 1970, Pub. L. 91-358, title I, § 155(c) (39) (A), 84 Stat. 572; Dec. 24, 1973, Pub. L. 93-198, title IV, § 493(b), 87 Stat. 811; Jan. 3, 1975, Pub. L. 93-635, § 17, 88 Stat. 2178.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended section as follows:

(1) Inserted the following at the end of the first sentence: “, except that the members (other than the Commissioner of the District of Columbia) serving as commissioners of such Commission on January 1, 1975, by virtue of their appointment by the President, by and with the advise and consent of the Senate, shall continue to serve until the expiration of the terms for which they were so appointed. The member first appointed by the Mayor, by and with the advice and consent of the Council, on or after January 2, 1975, shall serve until June 30, 1978.”

(2) Repealed the first sentence which read: “Of the two commissioners first appointed after December 15, 1926, one shall be appointed for a term of two years, and one for a term of three years, commencing July 1, 1926.”

(3) Amended the sixth sentence by substituting “No Commissioner shall” for “No commissioner, other than the said Commissioner of the District of Columbia, shall”.

(4) Amended the seventh sentence by substituting “Mayor” for “Commissioner of the District of Columbia”.

(5) Amended the eighth sentence by substituting “No person shall” for “No person, other than the said Commissioner of the District of Columbia, shall”; and by inserting “of the District of Columbia” immediately after “Public Service Commission”.

1973—Act Dec. 24, 1973, Pub. L. 93-198, amended the first sentence generally. Prior to amendment, the sentence read: “The Public Service Commission of the District of Columbia shall be composed of three commissioners as follows: (1) The Commissioner of the District of Columbia, and (2) two persons appointed by the President, by and with the advice and consent of the Senate.”

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771 of Act of Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this amendment is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in the amendment to this section by Act Dec. 24, 1973, Pub. L. 93-198, as amended.

TRANSFER OF FUNCTIONS

Section 712 of Act Dec. 24, 1973, Pub. L. 93-198 [set out as § 1-132], provided in part that “[no] function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the . . . District Public Service Commission, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act [§ 1-144(a)]. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2-2418, 43-203, 43-205.

§ 43-201a. Function of Commission—Unjust, unreasonable, or discriminating charge prohibited.

There shall be a Public Service Commission whose function shall be to insure that every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably

safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminating charge for such facility or service is prohibited and is hereby declared unlawful. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 493(a), 87 Stat. 811.)

CODIFICATION

Section was enacted as part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of the Act of Mar. 4, 1913, which comprises chapters 1-10 of this title.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

§ 43-205. People's Counsel—Appointment, compensation, qualifications—Personnel—Duties.

(a) There is hereby established within the Public Service Commission of the District of Columbia, established by section 43-201, an office to be known as the “Office of the People's Counsel”.

(b) There shall be at the head of such office the People's Counsel who shall be appointed by the Mayor of the District of Columbia, by and with the advice and consent of the Council of the District of Columbia, and who shall serve for a term of three years. Appointments to the position of People's Counsel shall be made without regard to the provisions of title 5 of the United States Code, governing appointments in the competitive service. The People's Counsel shall be entitled to receive compensation at the maximum rate as may be established from time to time for GS-16 of the General Schedule under section 5332 of title 5 of the United States Code. No person shall be appointed to the position of People's Counsel unless that person is admitted to practice before the District of Columbia Court of Appeals. Before entering upon the duties of such office, the People's Counsel shall take and subscribe the same oaths as that required by the Commissioners of the Commission, including an oath or affirmation before the Clerk of the Superior Court of the District of Columbia that he is not pecuniarily¹ interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia.

(c) The People's Counsel is authorized to employ and fix the compensation of such employees, including attorneys, as are necessary to perform the functions vested in him by this Act, and prescribe their authority and duties.

(d) The People's Counsel—

(1) shall represent and appeal for the people of the District of Columbia at hearings of the Commission and in judicial proceedings involving the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission;

¹ So in original.

(2) may represent and appear for petitioners appearing before the Commission for the purpose of complaining in matters of rates or services;

(3) may investigate the services given by, the rates charged by, and the valuation of the properties of, the public utilities under the jurisdiction of the Commission; and

(4) is authorized to develop means to otherwise assure that the interests of users of the products of or services furnished by public utilities under the jurisdiction of the Commission are adequately represented in the course of proceedings before the Commission, including public information dissemination, consultative services, and technical assistance.

(Jan. 2, 1975, Pub. L. 93-614, § 1, 88 Stat. 1975.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3, of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

"This Act", referred to in subsec. (c), is the Act of Jan. 2, 1975, Pub. L. 93-614, which enacted this section and section 43-205a and amended section 43-412.

CODIFICATION

Section was enacted as part of the Act of Jan. 2, 1975, and not as part of the Act of Mar. 4, 1913, ch. 150, § 8, 37 Stat. 974, which comprises chapters 1-10 of title 43. A prior section, based on the Act of Mar. 4, 1913, § 8, par. 91A, as added Dec. 15, 1926, ch. 8, § 3, 44 Stat. 921, which established an office of People's Counsel and prescribed the duties thereof, has been omitted from the Code as the office was abolished by 1952 Reorg. Plan No. 5, § 2(b), 66 Stat. 824.

CROSS REFERENCE

Expenses of People's Counsel to be borne by public utilities, see § 43-412.

§ 43-205a. Same; Appropriations.

For the fiscal year ending June 30, 1975, there is authorized to be appropriated such sum, not to exceed \$50,000, as may be necessary to carry out the purposes of this Act. For the fiscal year ending June 30, 1976, and each fiscal year thereafter, there are authorized to be appropriated such sums, not to exceed \$100,000 in any one fiscal year, as may be necessary to carry out the purposes of this Act. (Jan. 2, 1975, Pub. L. 93-614, § 3, 88 Stat. 1977.)

REFERENCE IN TEXT

"This Act", referred to in text, is the Act of Jan. 2, 1975, Pub. L. 93-614, which enacted this section and section 43-205 and amended section 43-412.

CODIFICATION

Section was enacted as part of the Act of Jan. 2, 1975, and not as part of the Act of Mar. 4, 1913, ch. 150, § 8, 37 Stat. 974, which comprises chapters 1-10 of title 43.

§ 43-209. Authority of District of Columbia Commissioner to continue—Ordinances and regulations to remain in force until modified by the Public Service Commission.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 3.—SERVICE, VALUATION, ACCOUNTS

§ 43-301. Public utilities—Service and facilities—Charges to be reasonable, just, and nondiscriminatory—To obey orders of Commission.

NOTES TO DECISIONS

Determination of rate base—Generally

Differences in public utility's rate of return from different customer classes need not specifically and quantitatively be supported by customer class-cost considerations; differences can be based not only on quantity, but also on nature, time and pattern of use so as to achieve reasonable efficiency and economic operation. *Apartment House Council of Metropolitan Washington, Inc. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 332 A.2d 53).

§ 43-305. Commission to ascertain cost of construction, replacement value, outstanding stock—Information to be printed in annual report.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 4.—RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

§ 43-401. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by Court of Appeals.

NOTES TO DECISIONS

Due process—Procedural

Although utility's initial application and public notice were captioned as requests for increases in gas rates and, thus, did not clearly indicate that changes in steam and chilled water rates were also being sought, association representing hotel-office-cooperative apartment buildings complex had not been denied procedural due process where steam and chilled water rates were partially dependent upon interruptible gas rates charged other customers and, to that extent, the association was on notice that its steam and chilled water rates might be changed; but, in any event, any possible prejudice was cured when the Commission permitted association to intervene, reopened proceedings and approved new rates only after careful study of the evidence produced at the reopened proceeding. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A.2d 778).

Jurisdictional lines

It was not unreasonable, in allocating systemwide rate increase as between District of Columbia and state of Maryland, for Public Service Commission to let share of revenue increase follow share of total test-years electricity sales applicable to each jurisdiction. *L. S. Goodman v. Public Service Commission of the District of Columbia et al.* (1974, 497 F.2d 661, 162 U.S. App. D.C. 74).

Power to fix rates

Under provision of original service agreement that furnishing of steam and chilled water would be subject to a regulation to extent lawfully prescribed by any local regulatory commission having jurisdiction, that if during term of agreement such public regulatory authority prescribed different rates such rates would supersede rates specified in agreement and that either purchaser or seller had right at any time to request regulatory authority to fix just and reasonable rates, the Public Service Commission had power to change rates and to grant each party the right to seek rate changes. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A.2d 778).

Rate base

So long as capitalized interest is not included in rate base, inclusion of plant under construction provides no

excessive compensation to utility. *L. S. Goodman v. Public Service Commission of the District of Columbia et al.* (1974, 497 F.2d 661, 162 U.S.App.D.C.74).

Public Service Commission did not act arbitrarily, in rate-making case, by inclusion of plant under construction in rate base, although there were alternative methods available. *Id.*

Where Public Service Commission, in including plant under construction in rate base, chose between alternatives and achieved reasonable result, its findings could not be disturbed. *Id.*

Where Public Service Commission in including plant under construction in rate base could not determine whether impact of work in progress upon net operating income, when plant was completed, would be substantial, Commission properly gave specific effect to such possibility in setting rate of return at lowest end of range found to be acceptable, and was not required to make compensating adjustment of test-year revenue and expenses. *Id.*

Public Service Commission did not act arbitrarily, or "double charge" electric power rate payers, by adopting end-of-period rate base and by increasing overall fair rate of return allowed, thus assertedly taking account of effects of inflation twice. *Id.*

§ 43-402. Commission may adopt rules and regulations.

NOTES TO DECISIONS

Applicability of Administrative Procedure Act

Decision of Public Service Commission in telephone rate proceedings to furnish transcripts to intervenors at telephone company's expense does not constitute a proper exercise of Commission's delegated powers to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it, since any procedure established by the Commission must conform with the minimum requirements set forth in Administrative Procedure Act (§§ 1-1501 et seq.), and since Commission's rule that transcripts be furnished to intervenors at telephone company's expense was a mere nullity because it contravened express language of section 1-1509. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 339 A.2d 710).

§ 43-411. Reasonable rates may be ordered—Notice to be given utility affected thereby.

NOTES TO DECISIONS

Power to fix rates

Under provision of original service agreement that furnishing of steam and chilled water would be subject to a regulation to extent lawfully prescribed by any local regulatory commission having jurisdiction, that if during term of agreement such public regulatory authority prescribed different rates such rates would supersede rates specified in agreement and that either purchaser or seller had right at any time to request regulatory authority to fix just and reasonable rates, the Public Service Commission had power to change rates and to grant each party the right to seek rate changes. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A.2d 778).

§ 43-412. Expenses of investigation or revaluation to be borne by utility—Deposit for costs—Limitation of expenditures in rate and revaluation hearings.

The expenses, including the expenses of the Office of the People's Counsel, of any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding, or from any order or action of the Commission, shall be borne by the public utility investigated, valued, revalued, or otherwise

affected as a special franchise tax in addition to all other taxes imposed by law, and such expenses with interest at 6 per centum per annum may be charged to operating expenses and amortized over such period as the Commission shall deem proper and be allowed for in the rates to be charged by such utility. When any such investigation, valuation, revaluation, or other proceeding is begun the said Public Service Commission may call upon the utility in question for the deposit of such reasonable sum or sums as in the opinion of said commission, it may deem necessary from time to time until the said proceeding or the litigation arising therefrom is completed, the money so paid to be deposited in the treasury of the United States to the credit of the appropriation account known as "miscellaneous trust fund deposit, District of Columbia" and to be disbursed in the manner provided for by law for other expenditures of the government of the District of Columbia, for such purposes as may be approved by the Public Service Commission; or certified by the People's Counsel with respect to his expenses. Any unexpended balance of such sum or sums so deposited shall be returned to the utility depositing the same: *Provided*, That the amount expended by the Commission and the People's Counsel, combined in any valuation or rate case shall not exceed one-half of 1 per centum of the existing valuation of the company investigated, and that the amount expended in all other investigations shall not exceed one-tenth of 1 per centum of the existing valuation for any one company for any one year. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 42; Mar. 3, 1927, 44 Stat. 1351, ch. 304; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 3; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; Jan. 2, 1975, Pub. L. 93-614, § 2, 88 Stat. 1976.)

AMENDMENT

1975—Act Jan. 2, 1975, amended the sections as follows: (a) by amending the first sentence generally so as to include reference to the expenses of the Office of People's Counsel; (b) by inserting ", or certified by the People's Counsel with respect to his expenses" at the end of the second sentence; and (c) by inserting "and the People's Counsel, combined" immediately after "Commission" in the third sentence.

CROSS REFERENCE

Appropriations for Office of People's Counsel, see § 43-205a.

Chapter 7.—ORDERS AND COURT PROCEEDINGS

§ 43-704. Application to Court of Appeals for instructions—Application for reconsideration.

NOTES TO DECISIONS

Exhaustion of administrative remedy

Request for reconsideration was jurisdictional prerequisite for filing petition of appeal from order of Public Service Commission of the District of Columbia approving rate schedules and regulations proposed by regulated utility. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A.2d 778).

Seeking reconsideration of Public Service Commission order is jurisdictional prerequisite to filing an appeal; however, one need not have been a party to the proceeding before the Public Service Commission to seek reconsideration, one need only be affected by the order in question. *L. S. Goodman v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 309 A.2d 97).

§ 43-705. Appeal to Court of Appeals from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Commission not liable for costs or damages.

NOTES TO DECISIONS

Burden of proof

Onus was on association, which represented hotel, two office buildings and three cooperative apartment buildings and which sought appellate review of rate schedules and regulations governing steam and chilled water service to the complex, to make a convincing showing that the rate order was invalid because it was unjust and unreasonable in its consequences. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A. 2d 778).

Exhaustion of administrative remedy

Request for reconsideration was jurisdictional prerequisite for filing petition of appeal from order of Public Service Commission of the District of Columbia approving rate schedules and regulations proposed by regulated utility. *Watergate Improvement Association v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 326 A. 2d 778).

Seeking reconsideration of Public Service Commission order is jurisdictional prerequisite to filing an appeal; however, one need not have been a party to the proceeding before the public service commission to seek reconsideration, one need only be affected by the order in question. *L. S. Goodman v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 309 A. 2d 97).

Person affected

One who seeks judicial review of agency action must show impact of such action on himself. *Telephone Users Association v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 304 A. 2d 293; cert. denied 94 S. Ct. 1448, 1449, 415 U.S. 933, 934).

One who alleges that he uses and pays for telephone service is "person or corporation affected by" order increasing telephone rates. *Id.*

Telephone users' association which, according to Federal Communications Commission, appeared to be for all intents and purposes the alter ego of its attorney and was not, according to telephone company's records, a subscriber to telephone service was not a "person or corporation affected by" order increasing telephone rates. *Id.*

§ 43-706. Appeal limited to questions of law.

NOTES TO DECISIONS

In general

It is responsibility of Public Service Commission to present its decisions in manner amenable to judicial review. *Telephone Users Association v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 304 A. 2d 293; cert. denied 94 S. Ct. 1448, 1449, 415 U.S. 933, 934).

Evidence supporting findings

Determination by Public Service Commission, which granted electric utility a rate increase, that residential class should not bear burden of significant rate increases and that rate increases of 10.4 percent for residential class, 15.1 percent for commercial and industrial class and 22.2 percent for "high tension" class and the differentials in the inherent rates of return of 5.63 percent, 7.78 percent and 8.27 percent from such classes respectively were just, reasonable and nondiscriminatory is supported by substantial evidence. *Apartment House Council of Metropolitan Washington, Inc. v. Public Service Commission of the District of Columbia* (D.C. App. 1975, 332 A.2d 53).

In analyzing whether new rate established by Public Service Commission for electric power was or was not arbitrary, each component of determination was to be analyzed, i.e., reviewing court was to ascertain whether each of elements of Commission's order was supported by substantial evidence in the record. *L. S. Goodman v. Public Service Commission of the District of Columbia et al.* (1974, 497 F. 2d 661, 162 U.S. App. D.C. 74).

In electric power rate case, evidence before Public Service Commission sustained its findings that rate of return

had declined and that decline was attrition related. *Id.*

Conclusion of Public Service Commission, which granted power company's application for rate increase, that adjustment in test year data for revenues from the sale of power to another power company must be accompanied by a reduction in adjustment in the test year data for generator outage was supported by substantial evidence. *L. S. Goodman v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 309 A. 2d 97).

Where attrition was claimed, attrition being condition which can only be exemplified by showing trend over series of years, Public Service Commission erred in refusing, in rate-making case, to consider telephone company's evidence for years 1966 through 1969 on ground that whatever attrition occurred during 1966-1969 period had been recognized and allowed for in decision in previous rate case. *Telephone Users Association v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 304 A. 2d 293; cert. denied 94 S. Ct. 1448, 1449, 415 U.S. 933, 934).

In view of evidence that telephone company's forecasts in past had proved accurate, that Public Service Commission auditors were permanently assigned to telephone company's premises and continuously audited books which were maintained in accordance with Commission prescribed accounting system and that company's expert testified that 1972 forecast was developed in ordinary course of business as part of normal budgetary process, Commission erred in refusing, in rate-making proceeding, to consider company's 1972 forecast. *Id.*

In view of indications in record as to when information concerning telephone company's claim for certain expenses became available to Public Service Commission, Commission erred in refusing to consider company's data in support of its claim notwithstanding Commission's contention that, because company's claims were first made part of record as part of company's rebuttal case the Commission was unable either to review fully the company's forecast or present its own evidence of offsetting adjustments without unduly prolonging proceedings. *Id.*

Findings

Where findings of Public Service Commission with respect to rate base and net revenues of telephone company directly influenced ultimate determination of rates that company could charge, the findings, though subsidiary, were subject to judicial review. *Telephone Users Association v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 304 A. 2d 293; cert. denied 94 S. Ct. 1448, 1449, 415 U.S. 933, 934).

Where Public Service Commission failed in rate-making case to make adequate findings based on evidence in record respecting telephone company's claim of attrition, remand for further findings was required. *Id.*

Rates, computation of

A utility may not charge a higher rate in the future in order to recoup past losses. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 330 A. 2d 236).

Reasonableness and justness of rates fixed

Public Service Commission was not shown, in fixing electric power rates, to have recompensed power company for past losses. *L. S. Goodman v. Public Service Commission of the District of Columbia et al.* (1974, 497 F. 2d 661, 162 U.S. App. D.C. 74).

Public Service Commission acted properly, in making allowance for federal income taxes in electric power rate case, in applying maximum statutory tax rate. *Id.*

Rejection by Public Service Commission of claim of petitioner seeking reconsideration of rate increase, that since summer of test year, used in connection with application of power company for rate increase, was abnormally cool, gross test year revenues should be normalized by the addition of \$18,000,000 to reflect the normal demand for energy for air conditioning was not unreasonable, arbitrary or capricious. *L. S. Goodman v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 309 A. 2d 97).

Rejection of argument of customer, who sought reconsideration of order of Public Service Commission granting rate increase to power company, that additional operating

revenues generated from anticipated additions to power plant obviated need for present rate increase was not unreasonable, arbitrary or capricious in light of lack of evidence on projected revenues or expenses for future. *Id.*

Public Service Commission's computation of rate base of power company seeking rate increase by including actual cost of construction work in progress rather than capitalizing the interest on funds committed to construction was not unreasonable, arbitrary, or capricious. *Id.*

Despite claim that overall effective income tax rate of power company seeking rate increase was considerably less than the statutory rate, calculation of additional operating revenues necessary to realize the necessary after-tax increase by using statutory federal income tax rate was reasonable and proper. *Id.*

As respects rate increase awarded to power company, jurisdictional cost allocation, computed in reliance upon the average and excess demand method rather than basis of rate of growth, did not unfairly and irrationally discriminate against District of Columbia customers to the benefit of customers in other jurisdictions, and Public Service Commission's acceptance of such computation was not unreasonable, arbitrary or capricious. *Id.*

Review

In reviewing order of Public Service Commission, it is especially important to accord great respect to Commission in complex, esoteric area such as rate-making in which Commission has been entrusted with difficult task of deciding among many competing arguments and policies. *L. S. Goodman v. Public Service Commission of the District of Columbia et al.* (1974, 497 F. 2d 661, 162 U.S. App. D.C. 74).

In reviewing rate order of Public Service Commission, determination of reviewing court must focus on whether result reached is arbitrary, and the appealing party bears burden of clearly demonstrating arbitrary action, which burden cannot be met by advancing alternative techniques from which Commission could have chosen. *Id.*

Review of actions of Public Service Commission by Court of Appeals is limited to questions of law and the commission's findings of fact are deemed conclusive unless found to be unreasonable, arbitrary or capricious. *L. S. Goodman v. Public Service Commission of the District of Columbia* (D.C. App. 1973, 309 A. 2d 97).

Chapter 9.—PENAL PROVISIONS

§ 43-907. Prosecution and penalty for violation of rules.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—GENERAL PROVISIONS

§ 43-1003. Chapters to be liberally construed—Separability of provisions.

NOTES TO DECISIONS

Interim rate relief

Under statute giving Public Service Commission all additional and incidental power which may be proper and necessary to effect and carry out all powers specifically granted, Commission has the authority to issue plan for interim rate relief. *Chesapeake and Potomac Telephone Co. v. Public Service Commission of the District of Columbia* (D.C. App. 1974, 330 A. 2d 236).

Chapter 11.—ELECTRIC LIGHT AND POWER COMPANIES—SPECIAL ACTS

§ 43-1101. Extension of overhead wires in Georgetown—Extension of underground conduits in Mount Pleasant.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1102. Conduits and overhead wires for electric lighting prohibited in streets—House connections authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1104. Electric-lighting wires west of Rock Creek.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1105. Electric-lighting wires east of Rock Creek.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1106. Permits for repair, extension, and enlargement of conduits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1107. Extension of conduits—Ducts for use of fire and police wires—Maximum price of current—Additional charge for nonpayment of bills.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1108. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 12.—GAS COMPANIES—SPECIAL ACTS

§ 43-1202. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies—Payment of expenses incident thereto.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 13.—PRIVATE CONDUITS

§ 43-1301. Conditions under which private conduits may be laid.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1302. Refusal to remove conduits—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 14.—TELEGRAPH AND TELEPHONE COMPANIES

§ 43-1401. Additional telegraph and telephone wires prohibited on streets—Extensions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1402. Removal of telephone poles and wires—Area of removal—Duties of Commissioner—Extension of conduits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1403. Plans of conduits to be submitted to Commissioner—Permits—Removal of poles—Wires for house connections—Telephone companies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1405. Erection and maintenance of telephone poles in alleys—Poles outside designated limit—Temporary permits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1406. Regulations for inspection—Ducts for use of fire and police wires.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1407. Repairs and renewals.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1409. Removal of telegraph poles and wires—Duties of Commissioner—Extension of conduits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1410. Plans of conduits to be submitted to Commissioner—Permits—Removal of poles—Wires for house connections—Telegraph companies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1412. Erection and maintenance of telegraph poles in alleys—Poles outside designated limits—Temporary permits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1414. Regulations for inspection—Ducts for use of fire and police wires.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1415. Repairs and renewals.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—WATER SUPPLY, ASSESSMENTS, AND RATES

Sec.

- 43-1504a. Payment of rates for water and water service.
 43-1504b. Change of ownership or occupancy—Statement of account.
 43-1520c. Council authorized to fix water rates.
 43-1520d. Water and water service rates and charges.
 43-1540. Repealed.
 43-1542a. Same.
 43-1543. Acquisition of land for Washington aqueduct.

§ 43-1501. Water mains, pipes, and fire plugs—Commissioner to have power to erect.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Repair of water service pipes

Property owners who are financially able to repair broken water service pipes connecting district's main water pipe with their private plumbing systems have an adequate remedy against district in seeking money damages; hence preliminary injunction requiring the district to repair or replace the pipes was improvidently issued. *District of Columbia et al. v. North Washington Neighbors, Inc., et al.* (D.C. App. 1975, 336 A. 2d 828).

§ 43-1502. Water department—Operations of, to be under direction of Engineer's Office.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1503. Water supply—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1504. Fiscal year of water department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1504a. Payment of rates for water and water service.

All rates for water and water service hereby established shall be payable at least once semiannually. When the computation of the amount of any bill for any of such services results in a fraction of one-half cent or more, the next highest amount not containing a fraction shall be charged. (Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(c), 22 DCR 2115.)

CODIFICATION

Portion of section relating to payment of charges for sanitary sewer service is set out as § 43-1605b.

EFFECTIVE DATE

Sec. 801(e) of act Oct. 21, 1975, D.C. Law 1-23, provided "Title VII of this Act [amending § 43-1520c, and enacting §§ 43-1504a, 43-1504b, 43-1520d, 43-1605a, 43-1605b and provisions set out as notes under §§ 43-1520d, 43-1605a] shall take effect on July 1, 1975."

§ 43-1504b. Change of ownership or occupancy—Statement of account.

Any person who desires a statement of the account of any water or sewer service charge to the date of the acquisition of any premises shall make a written request to the Water Registrar on or before the date of such acquisition, except that the authority to enforce payment of water and sewer service charges by shutting off the water supply or by refusing to restore the water supply may be exercised without regard to any change of ownership or occupancy of any such premises. The Water Registrar shall have access to all premises furnished water or sewer service, and if any such premises is vacant, any request for a statement of account shall contain a fixed time at which a representative of the Water Registrar may obtain access. (Oct. 21, 1975, D.C. Law 1-23, title VII, § 703, 22 DCR 2116.)

EFFECTIVE DATE

See sec. 801(e) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 43-1504a.

§ 43-1506. Water registrar.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1510. Water mains and service sewers erected at discretion of Commissioner—Costs assessed against abutting property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1511. Assessments for water mains.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1512. Assessor to give notice of assessments.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 43-1519. Refund of water rents erroneously paid.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1520. Water rents—Rates.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1520c. Council authorized to fix water rates.

The Council of the District of Columbia is authorized from time to time to fix the rates charged by the District for water and water services furnished by the District water supply system, at such amount as the Council, on the basis of a recommendation made by the Mayor of the District of Columbia, determines is necessary to meet the expense to the District of furnishing such water and water services. In computing the charge for the consumption of water, if such charge is for a period beginning prior to a change in water rates and ending thereafter, such charge shall be prorated in such a manner as to charge for water consumed prior to the effective date of such new water rates at the rate which is in effect during that period of consumption, and to charge for water consumed after the effective date at the new rates. Nothing in this title shall be construed to modify the provisions of section 43-1530 relating to the delivery of water from the District water supply system to the Washington Suburban Sanitary Commission. (May 18, 1954, 68 Stat. 101, ch. 218, title I, § 101; Mar. 2, 1962, 76 Stat. 17, Pub. L. 87-408, § 501; Jan. 5, 1971, Pub. L. 91-650, title I, § 105(a), 84 Stat 1931; Oct. 21, 1975, D.C. Law 1-23, title VII, § 706, 22 DCR 2118.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

This title, referred to in the last sentence, is title I of Act May 18, 1954, ch. 218, which enacted §§ 43-1520c, 43-1521a to 43-1521d, and 43-1541, and amended §§ 43-1504 and 43-1540.

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended the second sentence generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(e) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 43-1504a.

§ 43-1520d. Water and water service rates and charges.

Notwithstanding any other provision of law or regulation, the following rates and charges shall be applicable for water and water services provided on or after July 1, 1975:

(1) ¹ *Rates and Charges for Metered Services.*

The minimum rate for water furnished any premises through a metered service shall be \$8.75 semi-annually for the use of up to 3,600 cubic feet of

water, payable in advance and for water furnished during such period in excess of that quantity the rate shall be thirty cents per one hundred cubic feet of water.

(Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(a), 22 DCR 2114.)

EFFECTIVE DATE

See sec. 801(e) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 43-1504a.

PENALTIES

Section 702 of act Oct. 21, 1975, D.C. Law 1-23, title VII, provided: "The penalties to be imposed for failure to pay bills for water and sewer service after the expiration of thirty days from the date of rendition thereof, and the payment of any costs incurred by the District of Columbia in connection with discontinuing and restoring the water supply to any premises, shall be as provided by sections 102 and 210 of the District of Columbia Public Works Act of 1954 (D.C. Code, secs. 43-1521a, 43-1609)."

WATER RATE STRUCTURE REPORT

Section 704 of act Oct. 21, 1975, D.C. Law 1-23, title VII, provided:

"By November 15, 1975, the Mayor of the District of Columbia shall submit to the Council of the District of Columbia a water rate structure which shall—

"(a) continue the increasing price rate structure contained in this title [VII] whereby per unit water rates increase with increased consumption;

"(b) a plan to provide for a minimum bill for water usage not to exceed \$2.89 for the first 1,200 cubic feet of water used during each six month period;

"(c) provide a scheme whereby residents of multi-family units will benefit on an equal basis with residents of single-family units in the low-minimum water usage rates; and

"(d) provide detailed substantiation for the rate structure. The structure, plan and scheme submitted by the Mayor under this section shall be designed to make no change in the amount of revenue derived from the water rates and sewer service charges, and shall not take effect unless implemented by further action of the Council."

DURATION OF WATER RATES AND SEWER CHARGES

Section 705 of act Oct. 21, 1975, D.C. Law 1-23, title VII, provided:

"The water rates and sewer service charge contained in this title [VII], to be effective July 1, 1975, shall terminate on January 1, 1976, unless—

"(1) the Mayor of the District of Columbia submits to the Council of the District of Columbia, by November 15, 1975, a complete report substantiating the increased water rates and sewer service charges as necessitated by increased government cost; and

"(2) the Council adopts a resolution (before January 1, 1976) stating that the Council concurs in the Mayor's report. In the event such report is not submitted to the Council by November 15, 1975, or the Council does not adopt such resolution by January 1, 1976, then the water rates and sewer service charges in effect on June 30, 1975 shall again be effective beginning January 1, 1976."

§ 43-1521. Commissioner to have authority to collect water rates in advance.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1521b. Discontinuance of water service for failure to pay water charges.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

¹ Enacted without a par. (2).

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1530. Commissioner authorized to deliver water in nearby Maryland—Contract.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1531a. Delivery of water to Falls Church, Virginia, and adjacent areas—Installation expenses—Payments for water—Revocation of permit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1531c. Acquiring of lands for pipe lines authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1533. Potomac water to be furnished to charitable institutions without charge.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1539. District of Columbia water system defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1540. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(b), 87 Stat. 832.

Section, Acts June 2, 1950, 64 Stat. 195, ch. 218, § 2; May 18, 1954, 68 Stat. 103, ch. 218, § 108; Jan. 5, 1971, Pub. L. 91-650, title I, § 103(d), 84 Stat. 1930; related to loans to expand the water system. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the repeal of this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

LOAN REPAYMENT OBLIGATION

See note under § 9-220.

§ 43-1541. Water and water service supplied for the use of the Government of the United States.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1542. Potomac River reservoir—Contract authority—District share of costs—Water delivery charges—Appropriations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1542a. Same.

(a) The Mayor is authorized to contract with the United States, any State in the Potomac River Basin, any agency or political subdivision thereof, and any other competent State or local authority, with respect to the payment by the District to the United States, either directly or indirectly, of the District's equitable share of any part or parts of the non-Federal portion of the costs of any reservoirs authorized by the Congress for construction on the Potomac River or any of its tributaries. Every such contract may contain such provisions as the Mayor may deem necessary or appropriate.

(b) Unless hereafter otherwise provided by legislation enacted by the Council, all payments made by the District and all moneys received by the District pursuant to any contract made under the authority of this Act shall be paid from, or be deposited in, a fund designated by the Mayor. Charges for water delivered from the District water system for use outside the District may be adjusted to reflect the portions of any payments made by the District under contracts authorized by this Act which are equitably attributable to such use outside the District. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 488, 87 Stat. 808.)

REFERENCE IN TEXT

"This Act", referred to in subsec. (b), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

Section 771 of the Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 43-1543. Acquisition of land for Washington aqueduct.

Appropriations are hereby authorized for the acquisition, by gift, dedication, exchange, purchase, or condemnation, of land or rights in or on land or

easements therein for the Washington aqueduct by the Chief of Engineers, Corps of Engineers, United States Army, or his designated agents. (Oct. 26, 1973, Pub. L. 93-140, § 18, 87 Stat. 507.)

APPROPRIATIONS

See note under § 1-226a.

Chapter 16.—SANITARY SEWAGE WORKS

SUBCHAPTER I.—D.C. SANITARY SEWAGE WORKS

Sec.

- 43-1605a. Sanitary sewer service charges.
- 43-1605b. Payment of sanitary sewer service charges.
- 43-1612, 43-1613. Repealed.
- 43-1615 to 43-1617. Repealed.
- 43-1619. Agreements with Maryland and Virginia.

SUBCHAPTER II.—DULLES INTERNATIONAL AIRPORT SANITARY SEWER

* * * *

SUBCHAPTER I.—D.C. SANITARY SEWAGE WORKS

§ 43-1601. Definitions.

For the purposes of this subchapter—

* * * *

CODIFICATION

The first line of this section is set out in this supplement to reflect the redesignation of sections 43-1601 to 43-1618 as subchapter I of this chapter.

§ 43-1602. D.C. Sanitary Sewage Works Fund.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1603. Use of the D.C. Sanitary Sewage Works Fund.

Subject to appropriations, the D.C. Sanitary Sewage Works Fund shall be available for use by or under the direction and control of the Mayor of the District of Columbia for—

* * * *

(f) payments to the General Fund and other funds of the District for such expenses or estimated expenses as are or may be incurred in the administration of this subchapter;

(g) payment to the United States Treasury of the interest, in accordance with the provisions of this subchapter, on loans to the District for such Sanitary Sewage Works Fund;

(h) repayment to the United States Treasury of the principal amount of each loan made to the District in accordance with the provisions of this chapter, and of any advancements made to the District in accordance with the provisions of section 43-1604; and

* * * *

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Portions of this section are set out in this supplement to reflect redesignation of sections 43-1601 to 43-1618 as subchapter I of this chapter, and to correct an error appearing in the main edition.

§ 43-1604. Advances for sanitary sewage works—Reimbursement for amounts advanced.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43-1603.

§ 43-1605. Service charges for sanitary sewer service—Authority of Council.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1605a. Sanitary sewer service charges.

The charge for sanitary sewer service furnished any premises in the District of Columbia shall be 90 per centum of the charge for water or water service furnished any such premises from the District of Columbia Water Supply System and shall be collected in the same manner and at the same time as water charges are collected. When water is supplied any such premises from a source or sources other than the District of Columbia Water Supply System, the charge for sanitary sewer service shall be the same in amount as would be charged if the same quantity of water were furnished such premises from the District of Columbia Water Supply System through metered service. The sanitary sewer charge shall be added as a separate item on the bill, if any, for water and water service furnished such premises. (Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(b), 22 DCR 2115.)

CODIFICATION

Section was enacted as part of the Revenue Act of 1975, and not as part of title II of the District of Columbia Public Works Act of 1954 which comprises this subchapter.

EFFECTIVE DATE

See sec. 801(e) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 43-1504a.

DURATION OF WATER RATES AND SEWER CHARGES

See sec. 705 of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 43-1520d.

PENALTIES

Section 702 of act Oct. 21, 1975, D.C. Law 1-23, title VII, provided: "The penalties to be imposed for failing to pay bills for water and sewer service after the expiration of thirty days from the date of rendition thereof, and the payment of any costs incurred by the District of Columbia in connection with discontinuing and restoring the water supply to any premises, shall be as provided by sections 102 and 210 of the District of Columbia Public Works Act of 1954 (D.C. Code, secs. 43-1521a, 43-1609)."

§ 43-1605b. Payment of sanitary sewer service charges.

All charges for sanitary sewer service hereby established shall be payable at least once semiannually. When the computation of the amount of any bill for any of such services results in a fraction of one-half cent or more, the next highest amount not containing a fraction shall be charged. (Oct. 21, 1975, D.C. Law 1-23, title VII, § 701(c), 22 DCR 2115.)

CODIFICATION

Portion of section relating to payment of rates for water and water service is set out as § 43-1504a.

Section was enacted as part of the Revenue Act of 1975, and not as part of title II of the District of Columbia Public Works Act of 1954 which comprises this subchapter.

EFFECTIVE DATE

See sec. 801(e) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 43-1504a.

CROSS REFERENCE

Change of ownership or occupancy, statement of account, see § 43-1504b.

§ 43-1606. Methods of determination of sanitary sewer service charges.

(a) The sanitary sewer service charges established under the authority of this subchapter shall be based on the water consumption of, and water service to, the properties served, and be determined by one of the following methods:

* * * *

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

A portion of subsection (a) of this section is set out in this supplement to reflect the redesignation of sections 43-1601 to 43-1618 as subchapter I of this chapter.

§ 43-1607. Persons obligated to pay sanitary sewer service charge.

(a) The owner or occupant of each building, establishment, or other place in the District connected with any District sewer conducting sanitary sewage shall pay the sewer service charge authorized by this subchapter.

(b) If the sanitary sewer service charge imposed by this subchapter is based on a water charge any part of which is for a period beginning prior to the imposition of the sanitary sewer service charge and ending thereafter, the sanitary sewer service charge shall be prorated, on a monthly basis, on so much of such water charge as shall have accrued subsequent to August 1, 1954.

* * * *

CODIFICATION

Subsections (a) and (b) of this section are set out in this supplement to reflect the redesignation of sections 43-1601 to 43-1618 as subchapter I of this chapter.

CROSS REFERENCE

Change of ownership or occupancy, statement of account, see § 43-1504b.

§ 43-1608. Meters and measuring devices—Maintenance and repairs.

All meters or other measuring devices installed or required to be used under the provisions of this

subchapter shall be under the control of the Mayor of the District of Columbia, and the Council of the District of Columbia, shall promulgate all regulations necessary in its judgment to effectuate the purposes of this subchapter. The owner or occupant of the property upon which any such measuring device is installed shall be responsible for its maintenance and safekeeping, and all repairs thereto shall be made at the owner's cost, whether such repairs are made necessary by ordinary wear and tear or other causes. Bills for such repairs, if made by the District, shall be due and payable when rendered, and the Mayor is authorized to provide for stopping the supply of water to any building or establishment upon the failure to pay such charge for meter repairs. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 209.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

The section is set out in this supplement to reflect the redesignation of sections 43-1601 to 43-1618 as subchapter I of this chapter.

§ 43-1609. Additional charge for overdue bills—Enforcement of lien.

The Council of the District of Columbia is hereby authorized, in order to encourage the prompt payment of the sanitary sewer service charge imposed by this subchapter, to impose an additional charge of 10 per centum for any sanitary sewer service charge remaining unpaid for more than thirty days, and the Mayor of the District of Columbia is authorized to shut off the water of premises for which such charge is not paid within thirty days, and to have and enforce a continuing lien for such charge upon the land and any improvements thereon furnished such sanitary sewer service, in the same manner and to the same extent as if sections 43-1521a, 43-1521b, 43-1521c, and 43-1521d were set forth in this subchapter, and such sections shall be deemed to be applicable in every particular to the sanitary sewer service charge imposed by this subchapter: *Provided*, That whenever said lien is enforced by the sale of property against which it has been assessed, so much of the proceeds of such sale as represents said unpaid sanitary sewer service charges shall be credited to the D.C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 107, ch. 218, title II, § 210.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

The section is set out in this supplement to reflect the redesignation of sections 43-1601 to 43-1618 as subchapter I of this chapter.

§ 43-1610. Sanitary sewer service charges as to churches and institutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1611. Sanitary sewer service charges for sewer services furnished for direct use by the Government of the United States.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1612. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(c), 87 Stat. 832.

Section, Act May 18, 1954, 68 Stat. 108, ch. 218, title II, § 213, related to loans from the U.S. Treasury for sanitary and combined sewer systems of the District. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that the repeal of this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

§ 43-1613. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(c), 87 Stat. 832.

Section, Acts May 18, 1954, 68 Stat. 108, ch. 218, title II, § 214; Sept. 6, 1960, 74 Stat. 811, Pub. L. 86-711, § 1; Jan. 5, 1971, Pub. L. 91-650, title I, § 103(b), 84 Stat. 1930; Dec. 15, 1971, Pub. L. 91-196, title V, § 501, 85 Stat. 654; related to the limit of loans for the sanitary and combined sewer systems. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

See note under § 43-1612.

§ 43-1614. Use of funds from D.C. Sanitary Sewage Works Fund for certain sewers—Allocation of cost.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 43-1615. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(c), 87 Stat. 832.

Section, Act May 18, 1954, 68 Stat. 109, ch. 218, title II, § 216, provided by advancement and availability of funds from loans. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

See note under § 43-1612.

§ 43-1616. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(c), 87 Stat. 832.

Section, Acts May 18, 1954, 68 Stat. 109, ch. 218, title II, § 217; Sept. 6, 1960, 74 Stat. 812, Pub. L. 86-711, § 1; provided for repayment of loans. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

See note under § 43-1612.

LOAN PAYMENT OBLIGATION

See note under § 9-220.

§ 43-1617. Repealed. Dec. 24, 1973, Pub. L. 93-198, title VII, § 743(c), 87 Stat. 832.

Section, Act May 18, 1954, 68 Stat. 109, ch. 218, title II, § 218, related to interest rates on loans. For new borrowing authority, see § 47-241 et seq.

EFFECTIVE DATE OF REPEAL

See note under § 43-1612.

§ 43-1618. Council's authority to make regulations.

The Council of the District of Columbia is authorized to make rules and regulations to carry out the provisions of this subchapter. (May 18, 1954, 68 Stat. 120, ch. 218, title XVII, § 1701.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

The section is set out in this supplement to reflect the redesignation of sections 43-1601 to 43-1618 as subchapter I of this chapter.

In addition to the sections contained in this subchapter the authority of the Council under section 402 (329) of Reorg. Plan No. 3 of 1967 to make regulations extends to all of the act of May 18, 1954, known as the District of Columbia Public Works Act of 1954, which has been classified to the following sections of the District of Columbia Code: §§ 7-132, 7-133, 7-901, 25-124, 25-138, 40-102, 40-103, 43-1504, 43-1511, 43-1520c, 43-1521a to 43-1521d, 43-1540, 43-1541, 43-1601 to 43-1618, 47-312, 47-313, 47-501a, 47-1203, 47-1206, 47-1208 to 47-1211, 47-1567b, 47-1701, 47-1901, 47-1912, 47-2331, 47-2501a, 47-2501b, 47-2601, 47-2602, 47-2604, 47-2605, 47-2701, 47-2702, 47-2705, 47-2802.

§ 43-1619. Agreements with Maryland and Virginia.

(a) The Mayor shall annually estimate the amount of the District's principal and interest expense which is required to service District obligations attributable to the Maryland and Virginia pro rata share of District sanitary sewage water works and other water pollution projects which provide service to the local jurisdictions in those States. Such amounts as determined by the Mayor pursuant to the agreements described in subsection (b) shall be used to exclude the Maryland and Virginia share of pollution projects cost from the limitation on the District's capital project obligations as provided in section 47-228(b).

(b) The Mayor shall enter into agreements with the States and local jurisdictions concerned for annual payments to the District of rates and charges for waste treatment services in accordance with the use and benefits made and derived from the operation of the said waste treatment facilities. Each such agreement shall require that the estimated amount of such rates and charges will be paid in advance, subject to adjustment after each year. Such rates and charges shall be sufficient to cover the cost of construction, interest on capital, operation and maintenance, and the necessary replacement of equipment during the useful life of the facility. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 487, 87 Stat. 808.)

CODIFICATION

Section was enacted as a part of the District of Columbia Self-Government and Governmental Reorganization Act, and not as part of title II of Act May 18, 1954, which comprises this subchapter.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

SUBCHAPTER II.—DULLES INTERNATIONAL AIRPORT SANITARY SEWER

§ 43-1620. Commissioner authorized to develop plan for interceptor and sewer line.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43-1621.

§ 43-1621. Potomac interceptor—Acquisition of rights-of-way—Plans and specifications—Operation and maintenance of regional sanitary sewer system—Charges for use of interceptor—Deposit of funds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43-1623.

§ 43-1622. Authorization of appropriations.

For the purposes of carrying out the provisions of this subchapter, there is authorized to be appropriated, without fiscal year limitation, to the Metropolitan Area Sanitary Sewage Works Fund the sum of \$3,000,000, as the Federal contribution toward the cost of planning, acquiring rights-of-way for, and constructing the Potomac interceptor. (June 12, 1960, 74 Stat. 210, Pub. L. 86-515, § 3.)

CODIFICATION

The section is set out in this supplement to reflect the redesignation of section 43-1620 to 43-1624 as subchapter II of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43-1621, 43-1623.

§ 43-1623. Advancement of funds—Crediting and repayment of loans.

(a) The Secretary of the Treasury is authorized and directed to advance to the Mayor, from time to time, and the Mayor is authorized to accept as loans, such additional funds, not exceeding a total of \$35,500,000, as may be appropriated to carry out the purposes of this subchapter. Any loan advanced under this section shall be credited to the Metropolitan Area Sanitary Sewage Works Fund, and—

* * * * *

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

A portion of subsection (a) is set out in this supplement to reflect the redesignation of section 43-1620 to 43-1624 as subchapter II of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43-1621.

§ 43-1624. Acquisition of land in Maryland or Virginia for Potomac interceptor—Title to and jurisdiction over land—Condemnation proceedings.

(a) The Mayor is authorized to acquire by purchase, condemnation, donation, or otherwise, any land or any interest in land located in Maryland or Virginia needed for construction and operation of the Potomac interceptor. Title to any such land or interest in land shall be taken in the name of the United States but shall be under the jurisdiction and control of the Mayor. For the purpose of acquiring any such land or any interest in land, the Mayor shall be deemed to be an officer of the Government within the meaning and for the purposes of section 257 of title 40, U.S. Code. The provisions of sections 258a-258e and 258f of title 40, U.S. Code, shall be applicable to any condemnation proceedings instituted pursuant to authority of this subchapter.

* * * * *

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Subsection (a) of this section is set out in this supplement to reflect the redesignation of sections 43-1620 to 43-1624 as subchapter II of this chapter.

TITLE 44.—RAILROADS AND OTHER CARRIERS

Chapter 1.—RAILROADS

§ 44-106. Reversion of property to District of Columbia—Adequate walkways provided.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—STREET RAILWAYS AND BUS LINES

Sec.

44-216. Unlawful conduct on public passenger vehicles.

44-217. Carrier authorized to refuse transportation to violators.

44-218. Penalties.

§ 44-204. Fenders required on streetcars.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 44-206. Construction of duct lines authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 44-211. Removal of disused tracks.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 44-212. Free transfers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 44-214a. Fares for schoolchildren not over 18 years of age—Formula for adjusting and payment of fare subsidy.

* * * * *

In the case of any common carrier required to furnish transportation to schoolchildren at a reduced fare under this section, the Washington Metropolitan Area Transit Commission shall certify to

the Mayor of the District of Columbia, with respect to each calendar month commencing with September 1968, and ending August 1977, all inclusive, an amount which is the difference between the total of all reduced fares paid during such calendar month to such carrier by schoolchildren in accordance with this section and the amount which would have been paid during that month to such carrier if such fares had been paid at the lowest adult fare established by the Commission for regular route transportation in that month. The certification required by this section shall be made for each such month as soon as practicable following the end thereof. The Mayor of the District of Columbia, upon receiving any such certification, shall pay the carrier with respect to which that certification was filed an amount equal to the amount contained therein. (As amended Aug. 14, 1974, Pub. L. 93-375, § 1, 88 Stat. 446.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1974—Act Aug. 14, 1974, Pub. L. 93-375, amended second par. of section by striking out "1974" and substituting "1977".

CONSTRUCTION OF 1974 AMENDMENT

Section 2 of Act Aug. 14, 1974, Pub. L. 93-375, provided: "Notwithstanding any other provision of law, or any rule of law, nothing in this Act (including the amendment made by this Act) shall be construed as limiting the authority of the Council of the District of Columbia to enact any act or resolution, after January 2, 1975, pursuant to the District of Columbia Self-Government and Governmental Reorganization Act with respect to any matter covered by this Act."

§ 44-216. Unlawful conduct on public passenger vehicles.

It shall be unlawful for passengers or occupants while aboard a public passenger vehicle with a capacity for seating twelve or more passengers, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority while said vehicle is transporting passengers in regular route service within the corporate limits of the District of Columbia to:

(a) Smoke or carry a lighted or smoldering pipe, cigar or cigarette in or upon any bus or rail transit car;

(b) Consume food or drink in or upon any bus or rail transit car;

(c) Spit in or upon any bus or rail car;

(d) Discard litter in or upon any bus or rail transit car;

(e) Play any radio, cassette, recorder or other such instrument, except where same is connected to an earphone that limits the sound to the individual user;

(f) Carry any flammable or combustible liquids, live animals, birds, reptiles, explosives, acids, or any item inherently dangerous or offensive to others upon any bus or rail transit car, except for seeing eye dogs properly harnessed and accompanied by blind passengers, and small animals properly packaged;

(g) Stand in front of the white line marked on the forward end of the floor of any bus, or otherwise conduct himself in such manner as to obstruct the vision of the operator;

(h) Board any bus through the rear exit door, unless so directed by an employee or agent of the carrier. (Sept. 23, 1975, D.C. Law 1-18, § 2, 22 DCR 1994.)

EFFECTIVE DATE

Section 5 of Act Sept. 23, 1975, D.C. Law 1-18, provided: 'The provisions of this act [enacting §§ 44-216 to 44-218 and provisions set out in notes under this section] shall go into effect on September 30, 1975.'

SEPARABILITY

Section 6 of Act Sept. 23, 1975, D.C. Law 1-18, provided: "If any provision of this act is declared unconstitutional the constitutionality of the remaining provisions shall not be affected thereby."

SHORT TITLE

The first section of Act Sept. 23, 1975, D.C. Law 1-18, provided: "That this act [enacting §§ 44-216 to 44-218 and provisions set out in notes under this section] may be cited as the 'Act to Regulate Public Conduct on Public Passenger Vehicles'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44-217, 44-218 of this title.

§ 44-217. Carrier authorized to refuse transportation to violators.

A carrier may refuse to transport a person or persons whose immediately observed conduct or be-

havior would constitute a violation of section 44-216. (Sept. 23, 1975, D.C. Law 1-18, § 3, 22 DCR 1995.)

EFFECTIVE DATE

See note under § 44-216.

§ 44-218. Penalties.

Violation of section 44-216 shall be punishable by a fine¹ of not less than ten nor more than fifty dollars for a first offense; and not less than fifty nor more than one hundred dollars or ten days in jail or both for each second or subsequent offense. (Sept. 23, 1975, D.C. Law 1-18, § 4, 22 DCR 1995.)

EFFECTIVE DATE

See note under § 44-216.

Chapter 3.—PASSENGER MOTOR VEHICLES FOR HIRE

§ 44-301. Passenger motor vehicles for hire to carry insurance—Exceptions—Liability of insurance company absolute.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 44-302. Insurance companies must be authorized to do business in District—Bonds to be secured—Insurance companies and corporate sureties must be approved by Superintendent—Reserves—Superintendent may make rules and regulations—Superintendent may withdraw certificate of approval after hearing—Conditions for cancellation of insurance policies and bonds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

¹ So in original, should be "fine".

TITLE 45.—REAL PROPERTY

Chapter 1.—CONVEYABLE ESTATES AND METHODS OF CONVEYANCE

§ 45-102. Perpetuities—Excepting charitable uses.

NOTES TO DECISIONS

Power to alienate suspended

For purposes of the rule against perpetuities, there must be certainty of vesting and power to alienate within the allowable period. *A. B. Cennamo v. American Security & Trust Company et al.* (1973, 360 F. Supp. 1354).

Where testamentary trust violated common-law rule against perpetuities and statute limiting suspension of power of alienation when read in isolation from rest of the will, but where such trust would not violate such rule or statute if offending lines were struck, where will contained savings clause directing trustee to terminate any trust in violation of any applicable rule against perpetuities on date limited by such rule, and elimination of such lines harmonized with testatrix' intent, such savings clause prevailed so as to result in elimination of the lines, and will as thus construed was not in violation of the rule or statute. *Id.*

Savings clause

Will, which provided that after death of life beneficiary, property would be held in trust for remaindermen until they reached age of 30, which provided for further trusts should remaindermen die before reaching age of 30, and which provided that all trusts created by will were to terminate on date limited by applicable rule against perpetuities or any similar rule of law, would be construed to provide that trusts for remaindermen would terminate when beneficiary reached the age specified in the will or 21 years from date of death of life beneficiary, whichever occurred earlier, so as not to violate 21-year rule of this section against perpetuities. *In re Estate of D. H. Burrough* (1975, 521 F. 2d 277, 172 U.S. App. D.C. 177).

Chapter 3.—FORMS—COVENANTS AND WARRANTIES

§ 45-301. Forms of instruments.

NOTES TO DECISIONS

Constitutionality

District of Columbia statutes governing extrajudicial mortgage foreclosure procedures do not on their face violate due process clause of Fifth Amendment because they recognize right of private individuals contractually to create power of sale clauses which operate as a waiver of certain potential preforeclosure rights. *J. A. Bryant et al. v. Jefferson Federal Savings and Loan Association et al.* (1974, 509 F.2d 511, 166 U.S. App. D.C. 178).

Chapter 4.—ACKNOWLEDGMENTS

§ 45-401. Acknowledgment by attorney.

NOTES TO DECISIONS

Construction

Prohibition of this section of execution or acknowledgment by attorney of any deed of conveyance of either real or personal estate applies only to deeds of conveyance and not to contracts to convey which are subject to the statute of frauds which limits enforceability of certain agreements to those signed by party to be charged or by a person authorized by party to be charged. *M. A. Gustin v. R. D. Stegall et ano., Administrator, etc.* (D.C. App. 1975, 347 A.2d 917; cert. denied 96 S. Ct. 2174, — U.S. —).

Chapter 5.—EFFECTIVE DATE AND RECORDING OF DEEDS

§ 45-501. When deeds take effect.

CROSS REFERENCE

Real Estate Settlement Procedures Act of 1974, see 12 U.S.C. 2601 et seq.

NOTES TO DECISIONS

Deed withheld from record

Under evidence that grantee had furnished down payment with which grantor had purchased property and had made contributions toward mortgage payments for number of years thereafter, that deed in favor of grantee was executed at time of conveyance to grantor and that grantee did not record deed at that time because she did not want her husband to know of the transaction, grantee did not lose title to the property and was not limited to claiming only as a secured creditor for her advances on the purchase price even though grantee did not record deed until after death of grantor some 15 years after death of grantee's husband. *M. E. Smart v. E. W. Nevins* (D.C. App. 1972, 298 A. 2d 217).

Purpose of recording

Purpose of recordation of deeds is to protect rights of bona fide purchasers, creditors, assignees and others relying upon indicia of record ownership and as between grantor and grantee, failure of latter to record cannot be viewed as waiver of rights to the property. *M. E. Smart v. E. W. Nevins* (D.C. App. 1972, 298 A. 2d 217).

§ 45-506. Maps and plats not to be recorded.

NOTES TO DECISIONS

Servitudes

Although subdivision plats must be duly recorded in office of surveyor, once that requirement has been met, District of Columbia statutes do not prohibit an owner from incorporating a revised copy of the same plat in another recordable instrument in order to impress, through a suitable endorsement on the plat, a servitude upon a single lot in the original subdivision and, in such circumstances, the revised plat is being used only as method of imposing a servitude, and not to establish the areas and boundaries of lots in the subdivision. *H. Case v. A. E. Morrisette* (1973, 475 F. 2d 1300, 155 U.S. App. D.C. 31).

Equitable servitudes can be created by inscriptions on subdivision plats filed with surveyor, but they also may be created by deeds, with or without plats attached. *Id.*

Where deed described parcel as lot on subdivision plat recorded in office of surveyor and referred to it as area for parking as shown on revised plat recorded with declaration of covenants, purchaser was placed on notice of inscription affecting lot and either such constructive notice or purchaser's actual knowledge was sufficient to require enforcement of equitable servitude against purchaser and it was immaterial that copy of revised plat bearing inscription was recorded in office of recorder of deeds rather than with surveyor. *Id.*

Chapter 6.—MORTGAGES AND DEEDS OF TRUST

§ 45-601. Mortgages and deeds of trust executed, acknowledged, and recorded same as deeds.

CROSS REFERENCE

Real Estate Settlement Procedures Act of 1974, see 12 U.S.C. 2601 et seq.

§ 45-603. Estate of mortgagee or trustee conveyed.

NOTES TO DECISIONS

Constitutionality

District of Columbia statutes governing extrajudicial mortgage foreclosure procedures do not on their face violate due process clause of Fifth Amendment because they recognize right of private individuals contractually to create power of sale clauses which operate as a waiver of certain potential preforeclosure rights. *J. A. Bryant et al. v. Jefferson Federal Savings and Loan Association et al.* (1974, 509 F.2d 511, 166 U.S. App. D.C. 178).

§ 45-615. Terms of sale and notice to be given.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Service by publication on nonresidents, absent defendants, and unknown heirs or devisees, see § 13-336.

NOTES TO DECISIONS

Constitutionality

District of Columbia statutes governing extrajudicial mortgage foreclosure procedures do not on their face violate due process clause of Fifth Amendment because they recognize right of private individuals contractually to create power of sale clauses which operate as a waiver of certain potential preforeclosure rights. *J. A. Bryant et al. v. Jefferson Federal Savings and Loan Association et al.* (1974, 509 F.2d 511, 166 U.S. App. D.C. 178).

Last known address

Where owner of property never notified noteholder or trustee under deed of trust of owner's change of address, where owner, which was in the real estate business and knew the effect of default, was in serious default in its payments, and where owner was on notice that statutes required lender to send notice of foreclosure to owner at last known address, failure of owner to receive notice, which was mailed in time to reach owner at its old address but which did not reach that address until owner had moved, did not indicate deficiency on the part of the trustees or the noteholder in giving personal notice to property. *S & G Investment Inc. et al. v. Home Federal Savings and Loan Association et al.* (1974, 505 F. 2d 370, 164 U.S. App. D.C. 263).

Notice

Trustees under deed of trust are entitled to rely upon secured parties' notice of foreclosure to the owner of the property. *S & G Investment Inc. et al. v. Home Federal Savings and Loan Association et al.* (1974, 505 F. 2d 370, 164 U.S. App. D.C. 263).

Trustees under first deed of trust were not required, in addition to publishing notice of foreclosure in newspaper, to give personal notice of the foreclosure sale to the holder of the second lien, especially where second lienor had not given trustees notice that it wished to receive notice of any foreclosure sale. *Id.*

Publication of newspaper advertisement of foreclosure sale satisfied statutory requirement that terms of sale and notice be given and satisfied terms of deed of trust which provided that trustees had the power, upon the request of the noteholder, to sell the realty after such previous advertisement as the trustees might deem best for the interests of all concerned. *Id.*

Statutory requirement that notice of foreclosure sale under deed of trust be given to owner did not require that both the noteholder and the trustees give notice to the owner. *Id.*

Neither noteholder nor trustees under deed of trust were required to give notice of foreclosure sale to owner by telephone. *Id.*

§ 45-616. Sale of property and deficiency decree in personam—Same relief in re vendor's lien.

NOTES TO DECISIONS

Proceeds of sale

Where deed of trust authorized trustees to use the proceeds of foreclosure sale to pay the remaining unpaid balance of the principal of note given for purchase of the property whether or not the entire balance was due and where notice of foreclosure sale sent to owner indicated that property would be sold to satisfy the debt secured by the deed of trust and also informed owner as to what the balance due was, proceeds of sale were properly applied to pay the entire amount of the note, even though payments on the note were only three months delinquent. *S & G Investment Inc. et al. v. Home Federal Savings and Loan Association et al.* (1974, 505 F. 2d 370, 164 U.S. App. D.C. 263).

Chapter 7.—RECORDER OF DEEDS

SUBCHAPTER I.—APPOINTMENT AND FUNCTIONS OF RECORDER

§ 45-701. Appointment and duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TRANSFER OF FUNCTIONS

Section 712 of Act Dec. 24, 1973, Pub. L. 93-198 [set out as § 1-132], provided in part that "[no] function now vested pursuant to section 501 of Reorganization Plan Numbered 3 of 1967 in the . . . Office of the Recorder of Deeds, or in any officer, employee, or body of or under such agency, shall be considered as a function transferred to the Council pursuant to section 404(a) of this Act [§ 1-144(a)]. Each such function is hereby transferred to the officer, employee, or agency (including any body of or under such agency), to whom or to which it was delegated, or in whom or in which it has remained vested, until the Mayor or Council established under this Act, or both, pursuant to the powers herein granted, shall revoke, modify, or transfer such delegation or vesting."

CROSS REFERENCE

Real Estate Settlement Procedures Act of 1974, see 12 U.S.C. 2601 et seq.

§ 45-702. Deputy recorder—Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-703. Second deputy—His duties and powers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-714. Authority of Commissioner to increase or decrease fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-721. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-723. Imposition of tax—Rate—Returns—Liability for tax.

(a) There is hereby imposed on each deed at the time it is submitted to the Mayor for recordation a tax at the rate of 1 per centum of the consideration for such deed: *Provided*, That in any case where application of the rate of tax to the consideration for a deed results in a total tax of less than \$1 the tax shall be \$1.

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title II, § 203, 22 DCR 2097.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended subsec. (a) by substituting "1 per centum" for "one-half of 1 per centum".

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(a) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 40-103.

§ 45-724. Absence of consideration—Basis for computation of tax.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-725. Investigation by Commissioner to determine correctness of returns—Production of books and records—Examination of witnesses—Service of summons—Compelling attendance—Punishment for disobedience.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-726. Recordation—Conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-728. Deficiencies in tax—Notice of determination—Protests—Hearings—Time for payment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-729. Penalties and interest—Waiver—Interest on deficiency assessments—Extension of time for payment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-730. Compromise and settlement—Written agreements for settlement of tax liability—Penalties for illegal acts in connection with compromise agreements—Prosecutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-731. Compromise of penalties and adjustment of interest.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-732. Limitations—Time for making assessments—Extension of time by agreement—Suspension of running of period of limitations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-733. Administration of oaths.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-734. Appeal—Other remedies.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-736. Stamps and other devices for collection of tax.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-737. Promulgation of rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-738. Abatement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-739. Elimination of fractional stamps or devices.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—ESTATES IN LAND

§ 45-816. Tenancies in common, tenancies by the entirety, and joint tenancies.

NOTES TO DECISIONS

Estates by entireties

Where, when deed was executed in names of "John F. Douglass and Elizabeth Douglass, his wife, as tenants by the entirety," deceased was married to woman named Elizabeth but had been living for 15 years with another woman known by same name, court erred, in action wherein both women asserted right to property, in holding that property passed to wife by intestate succession on ground that deed was voided by action of second woman in having sister sign her name to deed of trust, rather than determining as matter of fact which of two women was intended to be referred to in deed by grantor thereof. *E. Snipes v. E. Douglass* (D.C. App. 1974, 319 A.2d 326).

Under deed of house "to Herbert L. Wright and Mattie G. Wright, his wife, and Pauline E. Liner . . . as joint tenants," the husband and wife acquired a one-half interest as tenants by the entirety and the other party acquired a one-half interest jointly with the entirety, particularly where a consideration of the transactions with respect to the property indicated that such result was the most likely intent of the parties. *E. M. Daniel v. H. L. Wright et al.* (1972, 352 F. Supp. 1).

§ 45-820. Estates by sufferance.

NOTES TO DECISIONS

Statutory tenancy at sufferance

A "tenancy at sufferance" requires payment of rent or "hirings" or a "rate per month" to accompany the estate. *M. A. Smith v. Town Center Management Corporation* (D.C. App. 1974, 329 A.2d 779).

§ 45-822. Estates at will—When terminated.

NOTES TO DECISIONS

Tenancy at will

A "tenancy at will" is an estate held by the joint will of lessor and lessee and such estate cannot exist or be created except by express contract. *M. A. Smith v. Town Center Management Corporation* (D.C. App. 1974, 329 A.2d 779).

Chapter 9.—LANDLORD AND TENANT

§ 45-902. Notices to quit—Month to month.

CROSS REFERENCES

Eviction, see § 45-1653.

Retaliatory action by landlord in rent control cases prohibited, see § 45-1654.

NOTES TO DECISIONS

Receipt of rent after notice

Finding, in action for possession by landlord, which charged rent on basis of the tenant's ability to pay, that fact that institution, which collected rent for landlord, accepted and deposited rent payment, which was made by tenant for new period after expiration of 30-day notice to quit, did not indicate an intention by landlord to waive such notice was not clearly erroneous. *J. D. Rhodes v. United States* (D.C. App. 1973, 310 A.2d 250).

Waiver

Landlord who, in early or mid-August, informed month-to-month tenant that she would have to vacate by September 1 or agree to rent increase, waived requirement of 30 days' written notice and is estopped to rely on this section relating to termination of tenancy and is not entitled to rent for September although tenant only gave oral notice on August 22 and did not comply with requirements of this section. *O. Sklar et ux. v. J. Hightower* (D.C. App. 1975, 342 A.2d 57).

§ 45-903. Tenancy at will—Notice for termination.

CROSS REFERENCES

Eviction, see § 45-1653.

Retaliatory action by landlord in rent control cases prohibited, see § 45-1654.

§ 45-904. Tenancy by sufferance—When terminated.

CROSS REFERENCES

Eviction, see § 45-1653.

Retaliatory action by landlord in rent control cases prohibited, see § 45-1654.

NOTES TO DECISIONS

Mootness

Where occupant, who vacated apartment under threat of eviction, had occupied apartment as a permissive user or licensee, occupant left as trespasser and took with her no right of reentry; thus, occupant's appeal from refusal to vacate default judgment for owner for possession of apartment had been rendered moot. *M. A. Smith v. Town Center Management Corporation* (D.C. App. 1974, 329 A.2d 779).

§ 45-906. Service of notice.

NOTES TO DECISIONS

Generally

Although service of notice to quit is not jurisdictional and can be waived, it is a condition precedent to the landlord's suit for possession. *H. A. Moody et ano. v. Winchester Management Corp.* (D.C. App. 1974, 321 A.2d 562).

Posting on premises

Service of notice to quit by resident manager who knocked on tenants' door but received no response and who slipped notice, enclosed in an envelope, under the door, did not constitute "posting in a conspicuous place" as required by this section and service of notice was defective. *H. A. Moody et ano. v. Winchester Management Corp.* (D.C. App. 1974, 321 A.2d 562).

Substituted service of notice to quit is less favored than delivery of the document to the tenant in person, and posting should be employed as a last resort. *Id.*

§ 45-908. Agreement as to notice.

NOTES TO DECISIONS

Waiver of notice

Landlord who, in early or mid-August, informed month-to-month tenant that she would have to vacate by September 1 or agree to rent increase, waived requirement of 30 days' written notice and is estopped to rely on section 45-902 relating to termination of tenancy and is not entitled to rent for September although tenant only gave oral notice on August 22 and did not comply with requirements of section 45-902. *O. Sklar et ux. v. J. Hightower* (D.C. App. 1975, 342 A.2d 57).

§ 45-910. Ejectment or summary proceedings.

CROSS REFERENCES

Eviction, see § 45-1653.

Retaliatory action by landlord in rent control cases prohibited, see § 45-1654.

NOTES TO DECISIONS

Abatement

Denial of landlord's request for summary possession against tenants, who placed words "Paid under protest" on their rent payment checks for purpose of avoiding waiver of right to challenge rent increases, on ground that granting of request would unduly impinge on class action challenging lawfulness of such increases was proper, notwithstanding contention that landlord's right to do with its property as it pleased would be impaired and contention that tenants in summary possession suit did not put into issue the lawfulness of the rent increases and thus such issue should not have been considered. *F. W. Berens Sales Co., Inc. v. G. McKinney et al.* (D.C. App. 1973, 310 A.2d 601).

Construction

In view of express terms of 1970 Court Reform Act, District of Columbia ejectment statute (this section) as amended by 1970 Court Reform Act was not "Act of Congress" within statute (28 U.S.C. 1345, 1363) giving original jurisdiction in district court of suits brought by the United States except as otherwise provided by Act of Congress. *H. and J. Herian et al. v. United States* (1973, 363 F. Supp. 287).

Counsel fees

Though landlord's summary possession suit against tenants, who placed words "Paid under protest" on their rent payment checks for purpose of avoiding waiver of right to challenge rent increases, may have been brought to achieve tactical advantage in class action challenging lawfulness of such increases, suit was not so clearly unwarranted or so vexatious, wanton or oppressive as to justify award of counsel fees to tenants on dismissal of suit. *F. W. Berens Sales Co., Inc. v. G. McKinney et al.* (D.C. App. 1973, 310 A.2d 601).

Defenses

Any claims which defendants sought to make concerning federal housing policy could be raised in District of Columbia Superior Court as defenses to ejectment proceedings brought by United States. *H. and J. Herian et al. v. United States* (1973, 363 F. Supp. 287).

Deposits in court

Trial court properly ordered tenant who had asserted defenses to landlord's possessory action and demanded jury trial to make monthly payments equal to accruing rental into registry of court pending resolution of case, where parties were present in court, relevant facts were not in dispute, and court heard argument from counsel for each party before granting landlord's motion. *D. McNeal v. N. Habib* (D.C. App. 1975, 346 A.2d 508).

If tenant in possessory action demands trial, future payments for use of premises become involved, and at hearing on landlord's motion for protective order, allegations of housing code violations are relevant to trial court's determination of amount which should be paid monthly into registry of court pursuant to protective order, notwithstanding fact that defense of housing code

violations is normally irrelevant to possessory action based upon valid 30-day notice to quit. *Id.*

Court may enter order disbursing funds paid into registry of court pursuant to protective order in contested possessory action only after holding hearing at which tenant has opportunity to present evidence as to, inter alia, extent to which rental contract figure should be abated, if at all, due to violations of housing regulations which might have existed during tenant's occupancy of premises while protective order was in effect. *Id.*

Jurisdiction

Under District of Columbia ejectment statute (this section) as amended by 1970 Court Reform Act, District Court does not have original jurisdiction over ejectment proceedings brought by the United States; intent of Court Reform Act was to vest exclusive jurisdiction of all ejectment proceedings in Superior Court, even those brought by the United States. *H. and J. Herian et al. v. United States* (1973, 363 F. Supp. 287).

Mootness

Inasmuch as landlord sold apartment building during pendency of tenant's appeal from eviction order, and landlord could no longer put tenant back into possession, case is moot. *S. J. Spingarn v. Lindow & Co.* (D.C. App. 1975, 342 A.2d 41).

Where occupant, who vacated apartment under threat of eviction, had occupied apartment as a permissive user or licensee, occupant left as trespasser and took with her no right of reentry; thus, occupant's appeal from refusal to vacate default judgment for owner for possession of apartment had been rendered moot. *M. A. Smith v. Town Center Management Corporation* (D.C. App. 1974, 329 A.2d 779).

Pleading

Landlord who chose to rely upon expiration of 30-day notice to quit, rather than upon apparently unpaid past rent, waived right to claim rental arrearages in proceeding for possession of premises, and could not have amended complaint to assert claim for rent due, though he is free to seek recovery of back rent in separate action. *D. McNeal v. N. Habib* (D.C. App. 1975, 346 A.2d 508).

Protective orders

Superior Court Landlord and Tenant Rule which provides, inter alia, that any motion which is dependent upon facts not apparent upon record shall be in writing and accompanied by sworn testimony setting out fully facts upon which motion is based, and that such motions shall be heard not earlier than fifth day after service, is inapplicable to landlord's motion for protective order requiring tenant to make payments equal to accruing rent into court registry made orally on return date in possessory action. *D. McNeal v. N. Habib* (D.C. App. 1975, 346 A.2d 508).

Chapter 10.—POWERS

§ 45-1002. General power.

NOTES TO DECISIONS

Conditions on exercise of power

For purposes of qualifying life interest left to wife under testamentary trust for marital deduction, power of appointment to wife was general and thus authorized an appointment of trust property to her estate, even though power was subject to condition that it be exercised by will. *Estate of J. Mittleman v. Commissioner of Internal Revenue* (1975, 522 F.2d 132, 173 U.S. App. D.C. 26).

Chapter 14.—REAL ESTATE AND BUSINESS BROKERS' LICENSES

§ 45-1401. Acting as broker or salesman without license unlawful.

NOTES TO DECISIONS

Conflict of laws

In suit by Washington, D.C. lawyers to recover compensation for services rendered in connection with the financing and sale of Maryland realty, the governing real estate broker licensing law is that of the District of Columbia in view of evidence that all conferences among the parties relative to the financing and sale of the realty were held

in the District of Columbia. *G. S. Leonard et al. v. BHJK Corporation* (1972, 469 F. 2d 108, 152 U.S. App. D.C. 97).

§ 45-1402. Definitions—Exceptions.

NOTES TO DECISIONS

Conflict of laws

In suit by Washington, D.C. lawyers to recover compensation for services rendered in connection with the financing and sale of Maryland realty, the governing real estate broker licensing law is that of the District of Columbia in view of evidence that all conferences among the parties relative to the financing and sale of the realty were held in the District of Columbia. *G. S. Leonard et al. v. BHJK Corporation* (1972, 469 F. 2d 108, 152 U.S. App. D.C. 97).

§ 45-1403. Real Estate Commission created—Membership—Seal—Records—Compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-1404. Qualifications for license.

NOTES TO DECISIONS

Findings

Findings of the Real Estate Commission, in denying license as a business-chance broker were supported by substantial evidence in light of license revocation some 20 years previously for failure to refund deposits, conviction many years previously resulting in prison sentence for filing fraudulent vouchers, and filing of petition in bankruptcy listing among unpaid debts unsatisfied obligation on real estate bond. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

Prior convictions

In denying application for license as a business-chance broker, it was not error for the Real Estate Commission to rely in part on a conviction for fraudulent conduct occurring prior to the ten-year period specified by § 14-305 as limitation on the use of prior convictions of witnesses for impeachment purposes in court trials. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

Trustworthiness and competency

A person may demonstrate competency and even good character and yet be so lacking in fiscal responsibility as to negate any assumption of trustworthiness in conducting a brokerage business in a manner calculated to safeguard the interests of the public. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

§ 45-1405. Application for license—Requirements—Location of business—Members—Individual broker's and real-estate salesman's license—Bond—Form, conditions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 45-1407. Details relating to license.

NOTES TO DECISIONS

Conflict of laws

In suit by Washington, D.C. lawyers to recover compensation for services rendered in connection with the financing and sale of Maryland realty, the governing real estate broker licensing law is that of the District of Columbia in view of evidence that all conferences among the parties relative to the financing and sale of the realty were held

in the District of Columbia. *G. S. Leonard et al. v. BHJK Corporation* (1972, 469 F. 2d 108, 152 U.S. App. D.C. 97).

§ 45-1409. Hearing before suspension—Court review—Appeal.

NOTES TO DECISIONS

Due process

Combination of prosecutorial and adjudicative functions in the same agency does not violate constitutional guarantee of due process. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

Fact that the Real Estate Commission itself presented and tried charges which it eventually adjudicated in denying application for broker's license did not deny applicant due process. *Id.*

Findings

Findings of the Real Estate Commission, in denying license as a business-chance broker were supported by substantial evidence in light of license revocation some 20 years previously for failure to refund deposits, conviction many years previously resulting in prison sentence for filing fraudulent vouchers, and filing of petition in bankruptcy listing among unpaid debts unsatisfied obligation on real estate bond. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

Prior convictions

In denying application for license as a business-chance broker, it was not error for the Real Estate Commission to rely in part on a conviction for fraudulent conduct occurring prior to the ten-year period specified by § 14-305 as limitation on the use of prior convictions of witnesses for impeachment purposes in court trials. *L. M. Bryant v. Real Estate Commission of the District of Columbia* (D.C. App. 1973, 302 A. 2d 721).

Chapter 16.—RENT CONTROL

SUBCHAPTER I.—EMERGENCY RENT ACT OF 1951

Sec.

45-1601 to 45-1611. Repealed.

SUBCHAPTER II.—RENT CONTROL ACT OF 1973

45-1621 to 45-1627. Omitted.

SUBCHAPTER III.—RENTAL ACCOMMODATIONS ACT OF 1975

TITLE I.—RENTAL ACCOMMODATIONS COMMISSION

45-1631. Establishment of Commission.

45-1632. Duties.

45-1633. Rental Accommodations Office.

45-1634. Duties of Rent Administrator.

TITLE II.—RENT STABILIZATION

45-1641. Definitions.

45-1642. Registration—Coverage.

45-1643. Registration fee.

45-1644. Rent ceiling.

45-1645. Capital improvements.

45-1646. Services and facilities.

45-1647. Security deposit.

45-1648. Vacant accommodation.

45-1649. Hardship petition.

45-1650. Substantial rehabilitation.

45-1651. Transitional provision.

45-1652. Adjustment procedure.

45-1653. Eviction.

45-1654. Retaliatory action.

45-1655. Penalties.

TITLE III.—CONVERSION OF RENTAL HOUSING

45-1661. Sale of single family housing accommodation.

45-1662. Condominium conversion.

TITLE IV.—MISCELLANEOUS

45-1671. Construction.

45-1672. Transfer of property, records, and unexpended balances—Continuation of determinations etc.

45-1673. Judicial review.

45-1674. Severability.

SUBCHAPTER I.—EMERGENCY RENT ACT OF 1951

§§ 45-1601 to 45-1611. Repealed. Nov. 21, 1973, Pub. L. 93-157, § 9, 87 Stat. 627.

Section 45-1601, Acts Dec. 2, 1941, 55 Stat. 788, ch. 553, § 1; Dec. 3, 1945, 59 Stat. 592, ch. 514; June 29, 1946, 60 Stat. 340, ch. 521; Aug. 1, 1947, 61 Stat. 713, ch. 429; Mar. 30, 1948, 62 Stat. 100, ch. 163; Apr. 29, 1948, 62 Stat. 205, ch. 243, § 1; Mar. 31, 1949, 63 Stat. 30, ch. 45; Apr. 19, 1949, 63 Stat. 48, ch. 73, § 1; June 30, 1950, 64 Stat. 310, ch. 428, § 1; Mar. 23, 1951, 65 Stat. 25, ch. 16; June 30, 1951, 65 Stat. 98, ch. 192, § 1; June 30, 1952, 66 Stat. 308, ch. 531, § 1; Apr. 30, 1953, 67 Stat. 26, ch. 32, § 1, dealt with the purposes and termination of the District of Columbia Emergency Rent Act of 1951.

Section 45-1602, Acts Dec. 2, 1941, 55 Stat. 788, ch. 553, § 2; Apr. 29, 1948, 62 Stat. 205, ch. 243, § 2; Apr. 19, 1949, 63 Stat. 49, ch. 73, §§ 2, 3, 5; June 30, 1950, 64 Stat. 310, ch. 428, § 2; June 30, 1951, 65 Stat. 99, ch. 192, § 1, dealt with maximum rent ceilings and minimum service standards.

Section 45-1603, Acts Dec. 2, 1941, 55 Stat. 789, ch. 553, § 3; June 30, 1951, 65 Stat. 100, ch. 192, § 1, related to general and special adjustments of rent ceilings and service standards.

Section 45-1604, Acts Dec. 2, 1941, 55 Stat. 790, ch. 553, § 4; June 30, 1950, 64 Stat. 310, ch. 428, § 3; June 30, 1951, 65 Stat. 100, ch. 192, § 1, authorized any landlord or tenant to petition for adjustment of rent ceilings and service standards.

Section 45-1605, Acts Dec. 2, 1941, 55 Stat. 791, ch. 553, § 5; Sept. 26, 1942, 56 Stat. 759, ch. 564, § 1; Aug. 1, 1947, 61 Stat. 721, ch. 442; Apr. 19, 1949, 63 Stat. 49, ch. 73, § 4; June 30, 1951, 65 Stat. 102, ch. 192, § 1, prohibited violations of the Act and regulations and orders thereunder, prohibited certain possessory actions, and prohibited retaliatory actions against tenants.

Section 45-1606, Acts Dec. 2, 1941, 55 Stat. 791, ch. 553, § 6; June 30, 1951, 65 Stat. 103, ch. 192, § 1, created the Office of Administrator of Rent Control and prescribed the salary, powers and duties thereof.

Section 45-1607, Acts Dec. 2, 1941, 55 Stat. 792, ch. 553, § 7; Sept. 26, 1942, 56 Stat. 759, ch. 564, § 2; June 30, 1951, 65 Stat. 103, ch. 192, § 1, dealt with the authority of the Administrator to obtain information and to prescribe rules and regulations.

Section 45-1608, Acts Dec. 2, 1941, 55 Stat. 792, ch. 553, § 8; June 30, 1951, 65 Stat. 104, ch. 192, § 1, dealt with procedure for the handling of petitions and the conduct of hearings.

Section 45-1609, Acts Dec. 2, 1941, 55 Stat. 793, ch. 553, § 9; Apr. 29, 1948, 62 Stat. 206, ch. 243, § 3; June 30, 1951, 65 Stat. 104, ch. 192, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6, related to judicial review of orders of the Administrator.

Section 45-1610, Acts Dec. 2, 1941, 55 Stat. 794, ch. 553, § 10; Apr. 19, 1949, 63 Stat. 49, ch. 73, § 6; June 30, 1951, 65 Stat. 105, ch. 192, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1, dealt with enforcement of the Act through court actions and prescribed penalties for violations.

Section 45-1611, Acts Dec. 2, 1941, 55 Stat. 794, ch. 553, § 11; June 30, 1951, 65 Stat. 106, ch. 192, § 1, contained definitions.

SUBCHAPTER II.—RENT CONTROL ACT OF 1973

§§ 45-1621 to 45-1627. Omitted.

Subchapter II (§§ 45-1621 to 45-1627) of this chapter terminated pursuant to § 45-1627 which provided in part that the provisions of the subchapter, and all rules, orders, and requirements thereunder, shall terminate at the end of the one-year period beginning on the date that rules adopted by the District of Columbia Council pursuant to § 45-1622(a) to regulate and stabilize rents in the District of Columbia become effective. Initial rules were adopted by the Council and published Apr. 29, 1974, at 20 DCR 1063.

Section 45-1621, Act Nov. 21, 1973, Pub. L. 93-157, § 2, 87 Stat. 624, contained definitions.

Section 45-1622, Act Nov. 21, 1973, Pub. L. 93-157, § 3, 87 Stat. 624, dealt with the powers of the D.C. Council.

Section 45-1623, Acts Nov. 21, 1973, Pub. L. 93-157, § 4, 87 Stat. 625; June 20, 1975, D.C. Law 1-6, § 1, 21 DCR 284, related to the Housing Rent Commission.

Section 45-1624, Act Nov. 21, 1973, Pub. L. 93-157, § 5, 87 Stat. 626, prohibited retaliatory action.

Section 45-1625, Act Nov. 21, 1973, Pub. L. 93-157, § 6, 87 Stat. 626, related to judicial review.

Section 45-1626, Act Nov. 21, 1973, Pub. L. 93-157, § 7, 87 Stat. 626, contained criminal penalties.

Section 45-1627, Act Nov. 21, 1973, Pub. L. 93-157, § 8, 87 Stat. 626, provided for termination of the subchapter.

SUBCHAPTER III.—RENTAL ACCOMMODATIONS ACT OF 1975

TITLE I.—RENTAL ACCOMMODATIONS COMMISSION

§ 45-1631. Establishment of Commission.

(a) There is established for the District of Columbia a Rental Accommodations Commission (hereinafter in this subchapter referred to as the "Commission") which shall consist of nine members to be appointed by the Mayor of the District of Columbia by and with the advice and consent of the Council of the District of Columbia. The Mayor shall make his initial appointments within 30 days after the effective date of this subchapter. Three of the members of the Commission shall represent the interests of landlords, and each of the three shall be a landlord of at least one housing accommodation located in the District of Columbia. Three of the members shall be tenants who shall represent the interests of tenants. The rest of the members of the Commission shall be neither landlords nor tenants. All members of the Commission shall be residents of the District of Columbia.

(b) Members of the Commission shall be appointed to serve for a two year term beginning on the effective date of this subchapter. In the case of a vacancy in the membership of the Commission, a new member shall be appointed to serve out the term of the member whose vacancy gave rise to the appointment. The Mayor shall have the authority to remove from the Commission any member who fails to meet the qualifications of a member or who fails to attend 70 percent of the regularly scheduled meetings held within any six month period.

(c) Members of the Commission shall be entitled to receive compensation of \$50.00 per day for each day spent in performing the duties of the Commission, except no member shall receive more than \$5,200 under this subsection in any one calendar year. No compensation shall be paid to a member of the Commission who is also an officer or employee of the United States or the District of Columbia government.

(d) Five members of the Commission shall constitute a quorum for the transaction of business so long as one of the five members is a landlord, one is a tenant, and two are neither landlords nor tenants.

(e) The chairperson and vice-chairperson of the Commission shall be selected by the members of the Commission from among their number and shall be neither landlords nor tenants. (Nov. 1, 1975, D.C. Law 1-33, title I, § 101, 22 DCR 2490.)

EFFECTIVE DATE

Section 404 of act Nov. 1, 1975, D.C. Law 1-33, provided that "This act [enacting this subchapter] shall take effect at the end of the 30 day period (excluding Saturdays, Sundays, holidays, and days on which either House of Congress is not in session) provided for Congressional review of acts of the Council under subsection (c) of section 602 of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)], and shall terminate at the end of the second year occurring immediately after such effective date. At the end of the first year following such effective date, the Council shall review the rent stabilization program established in this act [subchapter] through review of the reports required in Section 102(b) [§ 45-1632(b)] and through any other investigations or hearings it may conduct or require."

SHORT TITLE

The first section of act Nov. 1, 1975, D.C. Law 1-33, provided "That this act [enacting this subchapter] may be cited as the 'District of Columbia Rental Accommodations Act of 1975'."

§ 45-1632. Duties.

(a) The Commission shall—

(1) promulgate, amend, and rescind rules and procedures for the administration of this subchapter; and

(2) hear and decide appeals brought to it under sections 45-1644 and 45-1652 with respect to adjustments in the maximum rent allowable for a rental unit.

(b) In addition the Commission shall, twice each year, submit to the Council of the District of Columbia a report on the trends, during the immediate preceding six months, of tax, operating, and maintenance costs (as they relate to housing accommodations in the District of Columbia) and a recommendation as to whether any adjustment should be made, as a result of such trends, in the formula contained in section 45-1644 for computing the rent ceiling.

(c) (1) The Commission shall have the power to hold such hearings, sit and act at such times and places within the District of Columbia, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Commission may deem advisable in carrying out its functions under this subchapter.

(2) In the case of contumacy or refusal to obey a subpoena issued under this subsection by any person who resides, is found, or transacts business within the District of Columbia, the Superior Court of the District of Columbia, at the request of the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission, there to produce evidence if so ordered, or there to give testimony touching upon the matter under inquiry. Any failure of such person to obey any such order of the Superior Court may be punished by the Superior Court as contempt thereof.

(d) Upon the request of the chairperson, each department or entity of the District of Columbia government is authorized to furnish directly to the Commission assistance or information as may be necessary for the Commission to effectively carry out this subchapter. (Nov. 1, 1975, D.C. Law 1-33, title I, § 102, 22 DCR 2492.)

§ 45-1633. Rental Accommodations Office.

(a) There is established as an agency of the District of Columbia government, within the executive office of the Mayor, a Rental Accommodations Office (hereinafter in this subchapter referred to as the "Office") which shall have as its head a Rent Administrator to be appointed by the Mayor.

(b) The Rent Administrator shall be a resident of the District of Columbia and shall be entitled to receive annual compensation (payable in regular installments) at a rate as may be established but no less than class GS-15 on the General Schedule under section 5332 of Title 5 of the United States Code. (Nov. 1, 1975, D.C. Law 1-33, title III, § 103, 22 DCR 2493.)

§ 45-1634. Duties of Rent Administrator.

(a) The Rent Administrator shall carry out, according to the rules and procedures established by the Commission, the rent stabilization program established under title II of this subchapter.

(b) The Rent Administrator may employ, within such funds as may be available to him, such personnel and consultants, including legal counsel, as are necessary to carry out provisions of this subchapter. Such personnel and consultants shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates. (Nov. 1, 1975, D.C. Law 1-33, title I, § 104, 22 DCR 2494.)

TITLE II.—RENT STABILIZATION

TITLE REFERRED TO IN OTHER SECTIONS

This title II is referred to in section 45-1634.

§ 45-1641. Definitions.

For the purposes of this subchapter—

(a) The term "Council" means the Council of the District of Columbia established under section 1-141.

(b) The term "Mayor" means the Mayor of the District of Columbia established under section 1-161.

(c) Except as provided in section 45-1644(d), the term "base rent" means the rent charged (on a monthly basis) for a rental unit on February 1, 1973; or, in the case of a rental unit not rented on February 1, 1973, the rent last charged (on a monthly basis) for that rental unit between January 1, 1972, and February 1, 1973; or, in the case of a rental unit which was not rented during the period beginning January 1, 1972, and ending on February 1, 1973 or, if the landlord can show to the satisfaction of the Rent Administrator that the rent charged during that period cannot be determined, an appropriate rent as determined by the Rent Administrator.

(d) The term "capital improvement" means a permanent improvement or renovation other than ordinary repair, replacement, or maintenance, the use of which will continue beyond the twelve month period beginning on the date of completion of such capital improvement.

(e) The term "housing accommodation" means any structure or building in the District of Colum-

bia containing one or more rental units, and the land appurtenant thereto. Such term shall not include any hotel, motel, or other structure, including any room therein, used primarily for transient occupancy and in which at least 60 percent of the rooms devoted to living quarters for tenants or guests are used for transient occupancy.

(f) The term "housing regulations" means the Housing Regulations of the District of Columbia as established by the Commissioners' Order dated August 11, 1955, as amended.

(g) The term "initial leasing period" means that period during which the first tenant of a new rental unit or a rental unit covered by item (6) of subsection (a) of section 45-1642 rents such rental unit.

(h) The term "landlord" means an owner, lessor, sublessor, assignee, or agent of any thereof or other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit, including any person who has an option to buy or who has entered into a contract to buy any housing accommodation or rental unit with the intent to offer such housing accommodation or rental unit for rent.

(i) The term "person" means an individual, corporation, partnership, association, joint venture, business entity, or an organized group of individuals, and their successors and assignees.

(j) The term "related facility" means any facility, furnishing, or equipment made available to a tenant by a landlord, the use of which is authorized by the payment of the rent charged for a rental unit, including the use of any kitchen, bath, laundry facility, parking, and the use of common room, yard and other common area.

(k) The term "related services" means services provided by a landlord, or required by law or by the terms of a rental agreement to be provided by a landlord, to a tenant in connection with the use and occupancy of a rental unit, including repairs, decorating and maintenance, the provision of light, heat, hot and cold water, telephone answering and elevator services, janitor services, and the removal of trash and refuse.

(l) The term "rent" means the entire amount of money, money's worth, benefit, bonus, or gratuity demanded, received, or charged by a landlord as a condition of occupancy or use of a rental unit, its related services, and its related facilities.

(m) The term "rental unit" means any apartment, efficiency apartment, room, single-family house (and the land appurtenant thereto), suite of rooms, or duplex, which is rented or offered for rent for residential occupancy. Such term shall not include any room in a hotel, motel or other structure used primarily for transient occupancy.

(n) The term "market value" standing alone means the greater of ¹

(1) the total purchase price most recently paid for a housing accommodation; or

(2) the estimated market value of such housing accommodation, for property assessment purposes, as determined by the Mayor.

(o) The term "assessed market value" means the estimated market value of such housing accommodation, for property assessment purposes, as determined by the Mayor.

(p) The term "substantial rehabilitation" means any improvement to or renovation of a housing accommodation or a rental unit begun on or after February 1, 1973 for which the total expenditure equals 50 percent or more of the market value of the housing accommodation before such rehabilitation.

(q) The term "tenant" includes a tenant, subtenant, lessee, sublessee, or other person entitled to the possession, occupancy or the benefits thereof, of any rental unit.

(r) The term "maximum possible rental income" means the sum of the rents for all rental units, whether occupied or not, as of the date of the filing of the registration statement.

(s) The term "vacancy loss" shall be the amount of rent not collected (computed on an annual basis) due to vacant units. No amount shall be included for units occupied by a landlord or his employees or otherwise not offered for rent.

(t) The term "uncollected rent" shall be the amount of rents and other charges due but not collected from tenants minus the amount due and not collected from tenants whose location the landlord knows and from whom he has failed to attempt to recover the loss through legal action in the Superior Court of the District of Columbia or other appropriate forum after having had adequate opportunity to do so.

(u) The term "operating expenses" shall mean the expenses for the upkeep of the accommodation for any consecutive 12 month period in the 15 months immediately preceding the filing of the registration statement required by subsection (b) of section 45-1642, including but not limited to expenses for salaries of on-site personnel, supplies, painting, maintenance and repairs, utilities, professional fees, on-site offices, and insurance.

(v) The term "management fee" shall be the amount paid to a managing agent and any pro rata salaries of off-site administrative personnel paid by the landlord.

(w) The term "property taxes" shall be the amount paid to the District of Columbia Treasurer for real property tax on the housing accommodation.

(x) The term "other income which can be derived from the housing accommodation" shall include but not be limited to fees; commissions; income from vending machines; income from laundry facilities; parking and recreational facilities; late charges; and kindred income which a landlord earns because of his ownership of a housing accommodation other than the gross rental charge. (Nov. 1, 1975, D.C. Law 1-33, title II, § 201, 22 DCR 2495.)

EFFECTIVE DATE

See note under § 45-1631.

§ 45-1642. Registration—Coverage.

(a) Sections 45-1643 to 45-1652 shall apply to each rental unit in the District of Columbia, except—

(1) any rental unit in an establishment which has as its primary purpose the providing of

¹ So in original, probably should be followed by a dash.

diagnostic care and treatment of diseases, including but not limited to hospitals, convalescent homes, nursing homes, and personal care homes;

(2) any rental unit in any federally owned housing accommodation or in any housing accommodation with respect to which the mortgage or rent is federally subsidized;

(3) any rental unit in a housing accommodation for which the initial certificate of occupancy was issued after February 2, 1973 but such exception shall be effective only during the length of the initial leasing period or for the first year of tenancy, whichever is shorter;

(4) any dormitory of an institution of higher education, or a private boarding school, in which rooms are provided for students;

(5) any rental unit rented to another by the occupant of a housing accommodation of not more than two rental units, whether such occupant is the owner of such housing accommodation or a tenant who rents such housing accommodation; and

(6) any rental unit in any housing accommodation, for the length of the initial leasing period, or the first year of tenancy, whichever is shorter, which for the two years immediately preceding the effective date of this subchapter has been both vacant and not offered for rent *Provided That*, such housing accommodation is in substantial compliance with the housing regulations.

(b) Within not more than 90 days following the effective date of this subchapter each landlord shall file with the Rent Administrator, on a form approved by the Rent Administrator, a registration statement for each housing accommodation in the District of Columbia (whether subject to sections 45-1643 to 45-1652 or not) and for which he is receiving rent or is entitled to receive rent. The registration form shall contain that information the Rent Administrator may require, including, but not limited to—

(1) a description of the housing accommodation, including the address, number of rental units, number of stories, drainage, type of construction, date and number of housing business license issued by the District of Columbia Government with respect thereto, and date and number of the certificates of occupancy issued by the District of Columbia government with respect thereto;

(2) a description of the utilities, air-conditioning, and type of heating fuel used for each rental unit in such housing accommodation;

(3) rental information on each rental unit in such housing accommodation for the base rent date including the base rent, the current rent being charged, the amount of the security deposit if any, the related services included, and the related facilities and charges therefor;

(4) the information which is filed in paragraph (3) for the date on which such registration is filed;

(5) in the case of a housing accommodation which has been substantially rehabilitated, the market value of such housing accommodation prior to rehabilitation and the method of computing the market value, a description of such rehabil-

itation, and an itemized list of expenditures for rehabilitation;

(6) in the case of a housing accommodation which is planned to be substantially rehabilitated or in the process of being substantially rehabilitated, the market value of such housing accommodation prior to rehabilitation and the method of computing the market value, and a description of the proposed rehabilitation;

(7) in the case of a housing accommodation with respect to which the Rent Administrator has permitted, pursuant¹ subsection (a) of section 45-1645, the amortized costs of capital improvements to be included in the computation of the rate of return according to the formula provided in section 45-1644, the market value of such accommodation prior to such improvements, a list of all such improvements allowed pursuant to section 45-1645, and an itemized list of expenditures for such improvements;

(8) a list of any outstanding violations of housing regulations applicable to such housing accommodation;

(9) the name and address of the owner of such housing accommodation and, when applicable, the name of the resident agent;

(10) the information necessary for the Rent Administrator to easily and accurately compute, according to subsection (a) of section 45-1644, the rate of return for that housing accommodation; and

(11) the rate of return for that housing accommodation as computed by the landlord according to said formula.

(c) On or before the end of the third complete month occurring after the date the initial registration was filed under subsection (b) of this section, and, at the end of each third month thereafter, each landlord shall file with the Rent Administrator as to housing accommodations not excepted by subsection (a) of this section either—

(1) a certification of the accuracy of the information on the registration form filed by him;

(2) upon there occurring any change which would not affect the rent which may be charged under this subchapter, a sworn addendum setting forth the new information; or

(3) upon there occurring any change which would affect the rent which may be charged under this subchapter, and if the landlord wants an increase in such rent, a new registration statement. Such new registration statement per item (3) of this subsection may be filed only at the times indicated in this subsection and at no other time.

(d) Each registration form filed under this section shall be available for public inspection at the Office, and each landlord shall keep a duplicate of each registration form posted in a public place on the premises of the housing accommodation with respect to which such registration form applies *Provided That*, each landlord may, in lieu of posting in a public place in each single family housing accommodation, mail to each tenant of such hous-

¹ So in original, probably should be "pursuant to".

ing accommodation such duplicate of each registration form.

(e) Each registration form filed under this section which meets the minimum requirements established by the act and by the rules of procedure of the Commission shall be assigned a registration number.

(f) Each certificate of occupancy and each housing business license issued to any landlord in the District of Columbia after the effective date of this subchapter shall contain the registration number of those housing accommodations to which such certificate or license applies. (Nov. 1, 1975, D.C. Law 1-33, title II, § 202, 22 DCR 2500.)

REFERENCE IN TEXT

The effective date of this subchapter, referred to in subssecs. (a) (6), (b), and (f), is prescribed by sec. 404 of act Nov. 1, 1975, D.C. Law 1-33, which is set out as a note under § 45-1631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1641, 45-1643, 45-1644, 45-1662.

§ 45-1643. Registration fee.

Each landlord of a housing accommodation covered by this subchapter shall pay to the Mayor at the time that he applies for his housing business license and at the time that he applies for any renewal thereof or, in the case of a housing accommodation for which no such license is required, at the time he files his registration statement for that housing accommodation under section 45-1642(b), an annual registration fee of \$2 for each rental unit in a housing accommodation registered by him. Such fees shall be paid from time to time into the Treasury of the United States and credited to the General Fund of the District of Columbia. (Nov. 1, 1975, D.C. Law 1-33, title II, § 203, 22 DCR 2506.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1642, 45-1644.

§ 45-1644. Rent ceiling.

(a) Except to the extent provided in subsections (b), (c), and (d) of this section, and section 45-1651, no landlord may charge or collect rent for any rental unit in excess of the rent computed according to the following formula (hereinafter referred to in this subchapter as the "rent ceiling"):

(1) Step 1: add to the base rent an amount equal to 4 percent of the base rent.

(2) Step 2: add to the figure computed in Step 1 an amount equal to 8 percent of such figure.

(3) Step 3: (A) In the case of a housing accommodation for which the rate of return, as shown on the registration statement and computed according to part (B) of this step, is less than 8 percent, the landlord may add to the figure computed in step 2 a pro rata share of an amount sufficient to increase the maximum possible rental income for that housing accommodation by such an amount as will generate a rate of return of no greater than eight percent, *Provided That* no increase shall be more than five percent of (1) the amount computed in step 2 or (2) the rent as established by the Housing Rent Commission or a court of competent jurisdiction.

(B) In determining the rate of return for each housing accommodation, the following formula

shall be used (computed over a base period of any consecutive twelve month period within the fifteen months immediately preceding the filing of the registration statement):

(1) The sum of the maximum possible rent income which can be derived from a housing accommodation shall be added.

(2) To the sum of all other income which can be derived from the housing accommodation.

(3) From the total of maximum possible rental income which can be derived from a housing accommodation plus the sum of all other income which can be derived from the housing accommodation shall be subtracted (i) the dollar value of vacancy losses and (ii) uncollected rents the remainder of which shall be defined as the "gross income".

(4) From the gross income shall be subtracted (i) the operating expenses; (ii) property taxes; (iii) management fee of no more than six percent of the maximum rental income of the accommodation unless and only to the extent any additional amount is approved by the Rent Administrator pursuant to subsection (b) of section 45-1645; (iv) depreciation expenses (computed on a straight line basis) of no more than two percent of the assessed market value of the housing accommodation may be deducted in any one year as a depreciation expense, unless and to only the extent any additional amounts are approved by the Rent Administrator pursuant to subsection (c) of section 45-1645; and (v) amortized costs of capital improvements if and as permitted pursuant to subsection (a) of section 45-1645. The remainder after such subtractions shall be defined as the "net income".

(5) The net income shall be divided by the assessed market value of the housing accommodation to determine the rate of return.

(b) The rent ceiling for a particular rental unit computed according to the procedure specified in this section may be increased or decreased, as the case may be,

(1) according to section 45-1646, to allow for an increase or decrease in related services or facilities;

(2) according to section 45-1650, to allow for the cost of substantial rehabilitation; or

(3) according to section 45-1648, to allow for adjustments for vacant accommodations.

(c) In addition to the adjustments in the rent ceiling which are allowed as specified in subsection (b), any landlord may apply for a hardship adjustment to be computed under section 45-1649.

(d) The rent ceiling for any unit in a housing accommodation exempted by paragraphs (3), or (6) of subsection (a) of section 45-1642 from the provisions of sections 45-1643 to 45-1652, after the termination of such exemption, shall be the rent charged during the initial leasing period or during the first year of tenancy, whichever is less, increased by an amount not in excess of an amount computed in accordance with step 3 of the formula specified in subsection (a) *Provided That*, no increase shall be more than five percent of the rent so

charged. Such increase may be effected only in accordance with the procedures specified in subsections (h) and (i) of this section.

(e) Notwithstanding any provision of this subchapter, the rent for any rental unit shall not be increased above the base rent unless (1) the housing accommodation of which such rental unit is a part is in substantial compliance with the housing regulations *Provided That*, such non-compliance is not the result of tenant neglect or misconduct; (2) the housing accommodation is registered in accordance with section 45-1642; (3) the landlord of such housing accommodation is properly licensed pursuant to the housing regulations if such regulations require his licensing; and (4) the manager of such housing accommodation, when other than the landlord, is properly registered pursuant to the housing regulations if such regulations require his registration.

(f) If, on the effective date of this subchapter, the rent being charged exceeds the allowable rent ceiling, the rent shall be reduced to the allowable rent ceiling effective the next date that the rent is due, *Provided That* this subsection shall not apply to any rent approved by the Housing Rent Commission under Regulation 74-20 or any rent approved by a court of competent jurisdiction. The landlord shall notify the tenant in writing of the required decreases prior to the effective date of such decreases.

(g) Notwithstanding any other provision of this subchapter, no rent shall be increased under this subchapter for any rental unit with respect to which there is a valid written lease or rental agreement establishing the rent for such rental unit for the term of such written lease or rental agreement.

(h) (1) If a landlord indicates on his registration statement filed under subsection (b) of section 45-1642, or on any document filed under item (3) of subsection (c) of section 45-1642, that he is entitled to an increase in rents under part A of step 3 of subsection (a) and that he intends to so increase such rents, such landlord shall immediately notify (in writing) the tenants of the rental units to which such increase applies of the intended rent increase. Such notice shall be mailed to the tenants by certified mail, return receipt requested. Such notice shall include those items listed in subsection (i) of this section, and, in addition, a copy of that portion of the registration statement which shows the computation of the rate of return relating to the housing accommodation containing the rental units for which a rent increase is sought. The Commission shall by regulation prescribe the actual wording (including the size of type to be used) of a statement to be included with such notice informing the tenants that they may request an audit of such registration statement and a hearing on such audit and giving the address where and time within which such request may be made.

(2) Any intended rent increase to be made under part (A) of step 3 of subsection (a) of this section shall not be effective before the first day that rent is due occurring more than 30 days after the notice specified in paragraph (1) of this subsection is mailed. If during such 30 days, a tenant in a housing accommodation to which such increase applies files a request for an audit of such registration

statement, the Rent Administrator shall forthwith notify the landlord of such request and the landlord raising such rents shall pay the amounts collected reflecting such increase from the tenants of the housing accommodation, beginning on the effective date of such increase, into an interest bearing escrow account established by the landlord in a bank or other financial institution in the District of Columbia. Interest on such accounts shall be at least $5\frac{1}{4}$ percent. The landlord shall keep detailed records for such accounts showing the exact amounts in such accounts attributable to each tenant in the housing accommodation concerned. Such account, and such records, shall be maintained until the Rent Administrator completes the requested audit and issues an order specifying how the contents of such account is to be distributed. Either the landlord, or the tenant requesting an audit, may demand and receive a hearing on the audit. If the Rent Administrator finds, as a result of his audit, that such increase is justified, then he shall award the amounts in such account to the landlord. If the Rent Administrator finds, as a result of his audit that such increase was not justified, then he shall award the amounts in such account to the tenants concerned. If he finds such increase to be partially justified, he shall order the amounts in such account to be distributed equitably to reflect such finding. The Rent Administrator shall complete each such audit within a reasonable time.

(3) If any tenant files a petition for an audit of a registration statement more than 30 days after the mailing of the copy of such statement, the Rent Administrator shall conduct such an audit in a reasonable time, but the landlord shall not be required to place the amounts reflected by the increase in escrow. In addition, the Rent Administrator or Commission may initiate such an audit.

(4) An appeal may be taken from a decision of the Rent Administrator made as a result of an audit by filing a notice of such appeal with the Commission within fifteen days after the date of the decision being appealed.

(5) In the course of conducting any audit or review of any proposed rent increase under this subchapter, the Rent Administrator may require the landlord concerned to produce copies of relevant portions of income tax forms filed by the landlord with either the Federal or District of Columbia¹ for no more than three years.

(i) Each notice of an impending rent increase shall be in writing and shall contain a statement of the:

- (1) current rent;
- (2) proposed rent;
- (3) percentage increase that the proposed rent represents over the current rent;
- (4) effective date of the proposed rent increase;
- (5) base rent;
- (6) percentage increase that the current rent represents above the base rent;
- (7) percentage increase that the proposed rent represents above the base rent;

¹ So in original, probably should be followed by the word "Government".

(8) registration number of the accommodation;

(9) certification and explanation by the landlord that the unit is in substantial compliance with the housing regulations and that the increase is in substantial compliance with the housing regulations and that the increase is in compliance with this subchapter;

(10) exact method of computation of the increase including itemization of cost figures to which the increase is attributable when such increase is pursuant to sections 45-1645, 45-1646, 45-1648, 45-1649, 45-1650;

(11) statement of the penalties as described in section 45-1655, and

(12) location of the registration statement in a public place on the premises in accordance with subsection (d) of section 45-1642.

(Nov. 1, 1975, D.C. Law 1-33, title II, § 204, 22 DCR 2507.)

REFERENCE IN TEXT

The effective date of this subchapter, referred to in subsec. (f), is prescribed by sec. 404 of act Nov. 1, 1975, D.C. Law 1-33, which is set out as a note under § 45-1631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1632, 45-1641, 45-1642, 45-1645, 45-1649, 45-1651, 45-1652.

NOTES TO DECISIONS UNDER PRIOR LAW

Constitutionality, rent control regulations

Fact that rent schedules promulgated by Secretary of Housing and Urban Development for federally insured housing projects allowed the mortgagors to charge rents up to specified maximum did not render invalid, under Supremacy Clause, District of Columbia regulation setting rent ceiling beneath maximum fixed by the Secretary; although federal standard established a maximum rent it did not, conversely, create a right or entitlement to exact the specified maximum; in addition, since federal standard is permissive rather than mandatory, there is no "impossibility of dual compliance" with the two statutes. *Columbia Plaza Limited Partnership et al. v. A. Cowles et al.* (1975, 403 F. Supp. 1337).

Construction

Statute, which provides that in event of adoption of rent control rules by Council, there be a "means whereby increased cost incurred by * * * landlord[s] * * * shall be taken into consideration," requires prompt, and therefore meaningful, cost passthrough procedures. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Commissioner, et al.* (D.C. App. 1975, 343 A.2d 323).

Increased costs, pass-through

Rent control regulation's rent ceiling formula of a 12.32% increase in rent did not satisfy statutory requirement that a procedure for permitting cost pass-through be provided if rent control is to be imposed. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Commissioner, et al.* (D.C. App. 1975, 343 A.2d 323).

Rent control regulation's sections, which implemented Rent Control Act provision allowing Housing Rent Commission to grant hardship exemptions to landlords, did not satisfy statutory requirement that a procedure for permitting cost passthrough be provided if rent control is to be imposed, in that pass-through requirement of Act was separate from hardship exemption provision. *Id.*

Even if rent control regulation contained a cost pass-through mechanism, regulation was not enforceable where implementation of the cost passthrough procedure was shown by the record to be useless as a means of providing a meaningful passthrough of increases in operating costs. *Id.*

Judicial review

By specifically vesting the Superior Court with jurisdiction to review Rent Commission's decisions, Congress

gave statutory recognition to authority of trial court to use its equity power in rent control field. *Columbia Realty Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1975, 350 A.2d 120).

District of Columbia Court of Appeals is without jurisdiction to review Housing Rent Commission's voiding of hearing examiner's order allowing increased cost of operating property to be passed through to tenants due to landlord's failure to serve order on parties and Commission within 45 days after decision; review thereof would be in the Superior Court. *Id.*

§ 45-1645. Capital improvements.

(a) In the case of a landlord who has completed capital improvements, the Rent Administrator may permit the costs of such improvements, amortized over the useful life of such improvements and applied on an equal basis to all rental units within the housing accommodation benefiting from such improvement, to be included as an item in the computation of the rate of return to be subtracted from gross income as defined in part (B) of step (3) of subsection (a) of section 45-1644 *Provided That*, (1) the landlord has made available to the Rent Administrator and to the tenant concerned the plans, contracts, specifications, and building permits relating to the capital improvements; and (2) the Rent Administrator is satisfied that the interests of the tenant are being protected.

(b) Where, in the computation of a rate of return, a landlord seeks to deduct a management fee in excess of six percent of the maximum possible rental income, he shall first file with the Rent Administrator a petition to allow such excess to be deducted. If the Rent Administrator determines that such excess or part thereof is reasonable, he may permit to be deducted the same or so much thereof as he determines to be reasonable. The petition shall contain such information as the Rent Administrator may require including but not limited to the name of the payee of the fee and what, if any, identity exists between the landlord and the payee.

(c) Where, in the computation of a rate of return, a landlord seeks to deduct depreciation expenses in excess of two percent of the assessed market value of the housing accommodation, he shall first file with the Rent Administrator a petition to allow such excess to be deducted. If the Rent Administrator determines that such excess or part thereof is justified, he may permit to be deducted the same or so much thereof as he determines to be justified. The petition shall contain such information as the Rent Administrator may require including but not limited to what if any depreciation of the housing accommodation has been claimed for tax purposes.

(d) Nothing in subsections (b) and (c) of this section shall be construed to prohibit or limit the Rent Administrator in any determination of the accuracy of any claimed management fee of six percent or less of the maximum possible rental income or any claimed depreciation expense of two percent or less of the assessed market value of the housing accommodation. (Nov. 1, 1975, D.C. Law 1-33, title II, § 205, 22 DCR 2515.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1642, 45-1644, 45-1652.

§ 45-1646. Services and facilities.

If the Rent Administrator determines that—

(1) the related services or related facilities supplied by a landlord for a housing accommodation or for any rental unit therein are substantially increased; or

(2) the related services or related facilities supplied by a landlord for a housing accommodation or for any rental unit therein are substantially decreased;

then the Rent Administrator may increase or decrease the rent ceiling applicable to such rental unit accordingly. (Nov. 1, 1975, D.C. Law 1-33, title II, § 206, 22 DCR 2517.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1642, 45-1644, 45-1652.

§ 45-1647. Security deposit.

No person shall demand or receive a security deposit for any rental unit where no security deposit was demanded or received for such rental unit upon the effective date of this subchapter. (Nov. 1, 1975, D.C. Law 1-33, title II, § 207, 22 DCR 2518.)

REFERENCE IN TEXT

The effective date of this subchapter, referred to in text, is prescribed by sec. 404 of act Nov. 1, 1975, D.C. Law 1-33, which is set out as a note under § 45-1631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45-1642, 45-1644.

§ 45-1648. Vacant accommodation.

(a) When, after the date the initial registration statement is filed under this subchapter, a rental unit becomes vacant, the landlord may adjust the rent ceiling for such rental unit to the rent ceiling applicable to any substantially identical rental unit within the same housing accommodation, provided the tenant has vacated on his own initiative or as a result of notice to vacate for one of the following causes: (1) nonpayment of rent; (2) violation of an obligation of his tenancy, as provided in item (1) of subsection (b) of section 45-1653; or (3) use of the accommodation for an illegal purpose or purposes, as provided in item (2) of subsection (b) of section 45-1653.

(b) For the purposes of this section, rental units shall be defined to be "substantially identical" where they contain essentially the same square footage, essentially the same floor plan, comparable amenities and equipment, comparable locations with respect to exposure and height (if exposure and height have previously been factors in the amount of rent charged), and are in comparable physical condition. (Nov. 1, 1975, D.C. Law 1-33, title II, § 208, 22 DCR 2518.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1642, 45-1644.

§ 45-1649. Hardship petition.

(a) In those cases where, after any increase which may be permitted by Part (A) of step 3 of subsection (a) of section 45-1644, the landlord can show a negative cash flow after consideration of debt service, the Rent Administrator, upon petition of the landlord, may allow such additional increases

in rent as will generate a positive cash flow *Provided That*, in the consideration of such petitions, the Rent Administrator shall consider the degree of hardship which the requested increase will place upon the tenants of the housing accommodation.

(b) In those cases where the rent increase permitted by Part (A) of step 3 of subsection (a) of section 45-1644 is insufficient to generate a rate of return of eight percent computed according to the formula provided in Part (B) of said step, the Rent Administrator, upon petition of the landlord and after audit of the figures and computations in the most current registration statement, may allow such additional increases in rent as will generate a rate of return of eight percent. The Rent Administrator shall approve or disapprove such petition or any part thereof but shall not permit an increase which will generate a rate of return in excess of eight percent as of the time of the filing of the most current registration statement. (Nov. 1, 1975, D.C. Law 1-33, title II, § 209, 22 DCR 2519.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1642, 45-1644, 45-1652.

NOTES TO DECISIONS UNDER PRIOR LAW

Judicial review—Equitable jurisdiction

By specifically vesting the Superior Court with jurisdiction to review Rent Commission's decisions, Congress gave statutory recognition to authority of trial court to use its equity power in rent control field. *Columbia Realty Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1975, 350 A.2d 120).

District of Columbia Court of Appeals is without jurisdiction to review Housing Rent Commission's voiding of hearing examiner's order allowing increased cost of operating property to be passed through to tenants due to landlord's failure to serve order on parties and Commission within 45 days after decision; review thereof would be in the Superior Court. *Id.*

Superior Court did not abuse its discretion in taking equitable jurisdiction in case, in which landlords sought to have rent control regulation declared invalid and in which Housing Rent Commission was shown to have had an administrative inability to decide landlords' petitions for hardship adjustments, notwithstanding contention that landlords' proper remedy would have been to wait 60 days and then commence an action in Superior Court pursuant to provision of District of Columbia Rent Control Act. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Commissioner, et al.* (D.C. App. 1975, 343 A.2d 323).

— Standing

Landlords, who alleged injury in fact through loss of increased rent because of failure of Housing Rent Commission to decide petitions for hardship adjustments, who alleged that they were within zone of interest that rent control regulation in Rent Control Act was designed to protect and who alleged that there was no clear and convincing indication of a legislative intent to preclude judicial review, had standing to seek judicial review of failure of Commission to act on such petitions within the 60 days required by regulation. *Apartment and Office Building Association of Metropolitan Washington et al. v. W. E. Washington, Commissioner, et al.* (D.C. App. 1975, 343 A.2d 323).

§ 45-1650. Substantial rehabilitation.

(a) If the Rent Administrator determines that: (1) a rental unit is to be substantially rehabilitated, (2) such rehabilitation is in the interest of the tenants of such unit and the housing accommodation in which the unit is located, then the Rent Administrator may approve, contingent upon comple-

tion of such substantial rehabilitation, an increase in the rent ceiling for such rental unit, *Provided* That such rent increase is no greater than the equivalent of 125 percent of the rent ceiling applicable to such rental unit prior to substantial rehabilitation.

(b) In determining whether a housing unit is to be substantially rehabilitated, the Rent Administrator shall examine the plans, specifications and projected costs for such rehabilitation, which shall be made available to the Administrator by the landlord of the unit or accommodation to be rehabilitated.

(c) In determining whether substantial rehabilitation of a housing accommodation is in keeping with the interest of the tenants, the Rent Administrator shall consider, among other relevant factors: (1) the impact of such rehabilitation on the tenants of the unit or housing accommodation and (2) the existing condition of the unit or housing accommodation and the degree to which any violations of the housing regulations in such unit or housing accommodation constitute an impairment of the health, welfare and safety of the tenants.

(d) This section shall apply to the following: (1) any rental unit with respect to which a landlord has notified the tenant, after effective date of this subchapter, of intent to substantially rehabilitate; (2) any rental unit with respect to which, prior to the effective date of this subchapter: (i) the landlord has notified the tenant of the intended substantial rehabilitation; and (ii) all the tenants have left. (Nov. 1, 1975, D.C. Law 1-33, title II, § 210, 22 DCR 2520.)

REFERENCE IN TEXT

The effective date of this subchapter, referred to in subsec. (d), is prescribed by sec. 404 of act Nov. 1, 1975, D.C. Law 1-33, which is set out as a note under § 45-1631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1642, 45-1644, 45-1652, 45-1662.

§ 45-1651. Transitional provision.

In the case of rental units, the rents of which have been determined by the Housing Rent Commission or a court of competent jurisdiction, the landlord of such units shall not use steps 1 and 2 of subsection (a) of section 45-1644 in computing the allowable rent ceiling for such units, but shall use the rents so allowed in lieu of said steps. (Nov. 1, 1975, D.C. Law 1-33, title II, § 211, 22 DCR 2521.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1642, 45-1644.

§ 45-1652. Adjustment procedure.

(a) The Rent Administrator shall consider an adjustment allowed by sections 45-1645, 45-1646, 45-1649, or 45-1650 in the rent ceiling applicable to any rental unit upon a petition filed with him by the landlord of such rental unit. Such petition shall be filed with the Rent Administrator on a form provided by him containing such information as he may require including an itemization of the actual income and operating expenses for the housing accommodation of which that rental unit is a part for a two-year period ending not more than four months before the date such petition was filed or initiated. A

tenant may file a petition for adjustment of rent pursuant to section 45-1644(e) or resulting from a reduction of services or facilities pursuant to section 45-1646. The Rent Administrator shall approve or deny, in whole or in part, each such petition whether filed by landlord or tenant within 60 days after such petition is filed with him, unless an extension of time is approved, in writing, by both the landlord and tenant of such rental unit or by the Commission.

(b) Upon receipt of such petition, the Rent Administrator shall notify the landlord if the tenant filed the petition, or the tenants concerned if the landlord filed the petition by certified mail or any other form of service which assures delivery, of the receipt of such petition and of the right of either party to request (in writing) a hearing within fifteen days after the receipt of such notice. If a hearing is timely requested by either party, notice of the time and place of the hearing shall be furnished the parties by certified mail or any other form of service which assures delivery at least fifteen days before the commencement of such hearing. Such notice shall inform each of the parties of his right to retain legal counsel to represent him at the hearing.

(c) Each landlord of any rental unit with respect to which a petition is filed or initiated under this section shall submit to the Rent Administrator, within 15 days after demand therefor is made, an information statement, on a form approved by the Rent Administrator, containing the information the Rent Administrator may request or the Commission may require.

(d) The Rent Administrator may consolidate petitions and hearings relating to rental units in the same housing accommodation.

(e) The Rent Administrator may, without holding a hearing, refuse to adjust the rent ceiling for any rental unit, and may dismiss any petition for adjustment, if a final decision has been made on a petition filed under sections 45-1646, 45-1649, or 45-1650 or under District of Columbia Regulation 74-20 on another petition for adjustment as to the same rental units within the six months immediately before the filing of the immediate petition.

(f) All petitions filed under this section, all hearings held relating thereto, and all appeals taken from decision of the Rent Administrator, shall be considered and held according to the provisions of this section and the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1501 et seq.). In the case of any direct, irreconcilable conflict between the provisions of this section and the District of Columbia Administrative Procedure Act, the District of Columbia Administrative Procedure Act shall apply.

(g) Decisions of the Rent Administrator shall be made on the record relating to any petition filed with him. An appeal from any decision of the Rent Administrator may be taken by the aggrieved party to the Commission within ten days after the decision of the Rent Administrator, or the Commission may initiate a review of a decision of the Rent Administrator on its own initiative. The Commission may reverse, in whole or in part, any decision which it

finds to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the provisions of this subchapter, or unsupported by the substantial evidence in the record of the proceedings before the Rent Administrator; or it may affirm, in whole or in part, the Rent Administrator's decision. The Commission shall issue a decision with respect to an appeal within 30 days after such an appeal was filed. An appeal from a decision by the Rent Administrator respecting any rent adjustment shall not stay the effectiveness of the decision.

(h) No increase in rent allowed under this subchapter shall be implemented unless the tenant concerned has been given written notice, at least 30 days before the intended date of implementation, of such increase.

(i) A copy of any decision made by the Rent Administrator or by the Commission under this section shall be mailed to the parties to such decision. (Nov. 1, 1975, D.C. Law 1-33, title II, § 212, 22 DCR 2522.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-1632, 45-1642, 45-1644.

§ 45-1653. Eviction.

(a) Notwithstanding any other provision of law, no tenant shall be evicted from a rental unit unless he has been served with a written notice to vacate, specifying the reasons for such eviction, and a copy of such notice has been filed with the Rent Administrator.

(b) Notwithstanding any other provision of law, no tenant shall be evicted from a rental unit, notwithstanding the expiration of his lease or rental agreement, so long as such tenant continues to pay the rent to which the landlord is entitled for such rental unit, unless—

(1) the tenant is violating an obligation of his tenancy and fails to correct such violation within 30 days after receiving notice thereof from the landlord;

(2) a court of competent jurisdiction has determined that the tenant has performed an illegal act within such rental unit or housing accommodation;

(3) the landlord seeks in good faith to recover possession of such rental unit for his immediate and personal use and occupancy;

(4) the landlord has in good faith contracted in writing to sell the rental unit, or the housing accommodation in which such rental unit is located, for the immediate and personal use and occupancy by another person, so long as at the time he offers the rental unit or housing accommodation for sale the landlord has so notified the tenant in writing;

(5) the landlord seeks in good faith to recover possession of the rental unit for the immediate purpose of making alterations or renovations of the rental unit which cannot safely or reasonably be accomplished while the rental unit is occupied or for the immediate purpose of demolishing the housing accommodation in which such rental unit is located and replacing it with a new construction, so long as the plans for such alteration or new

construction have been filed with and approved by the Rent Administrator; or

(6) the landlord seeks in good faith to recover possession of the rental unit for the immediate purpose of discontinuing the housing use and occupancy of such rental unit for a continuous period of not less than 6 months.

(c) In any case where the landlord seeks to recover possession of a rental unit under paragraphs (3), (4), (5), or (6) of subsection (b) of this section he shall first notify the tenant of such rental unit, in writing and at least 90 days prior thereto, of his intent to recover possession of such rental unit *Provided That*, when the landlord seeks to recover possession of a rental unit under paragraph (5) for purposes of substantial rehabilitation, such notice shall be in accordance with section 45-1661.

(d) No landlord shall demand or receive rent for any rental unit which he has repossessed under paragraphs (3) or (6) of subsection (b) of this section during the 6 month period beginning on the date he recovered possession of such rental unit. No person who has purchased a rental unit which has been repossessed by a landlord under paragraph (4) of subsection (b) of this section shall demand or receive rent for such rental unit during the 6 month period beginning on the date such landlord recovered such rental unit.

(e) In the case of any rental unit which has been repossessed by a landlord under paragraph (5) of subsection (b) of this section, the tenant from whom the landlord repossessed such unit shall have an absolute right to rent such unit immediately upon completion of the renovation or alterations, and, where the renovations or alterations are necessary to bring the unit into compliance with the housing regulations, the tenant may rent at the same rent and under the same obligations as were in effect at the time he was dispossessed, *Provided That*, such renovations or alterations were not made necessary by the negligent or malicious conduct of such tenant. (Nov. 1, 1975, D.C. Law 1-33, title II, § 213, 22 DCR 2525.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45-1648.

§ 45-1654. Retaliatory action.

(a) No landlord shall take any retaliatory action against any tenant who exercises any right conferred upon him by this subchapter, or by any rule or order issued pursuant thereto, or by any other provision of law. Retaliatory action shall include any action or proceeding to recover possession of a rental unit; action which would increase rent, decrease services, increase the obligation of a tenant or constitute undue or unusual inconvenience, violate the privacy of the tenant, harass, reduce the quality or quantity of service; and any refusal to honor a lease or rental agreement or any provision of a lease or rental agreement, refusal to renew a lease or rental agreement, termination of a tenancy without cause; and any other form of threat or coercion.

(b) In determining whether an action taken by a landlord against a tenant is retaliatory action, the

trier of fact shall take into consideration whether, within the 6 months immediately preceding such landlord's action, the tenant—

(1) has made a witnessed oral or written request to the landlord to make repairs which are necessary to bring the housing accommodation or the rental unit into compliance with the housing regulations;

(2) contacted appropriate officials of the District of Columbia government, either orally in the presence of a witness or in writing, concerning existing violations of the housing regulations of the rental unit he occupies or pertaining to the housing accommodation in which such rental unit is located, or reported to such officials suspected violations which, if confirmed, would render such rental unit or housing accommodation in noncompliance with the housing regulations;

(3) withheld all or part of his rent, after having given a reasonable notice to the landlord, either orally or in the presence of a witness or in writing, of a violation of the housing regulations;

(4) organized, been a member of, or been involved in any lawful activities pertaining to a tenant organization;

(5) made an effort to secure or enforce any of his rights under his lease or contract with the landlord; or

(6) brought legal action against the landlord based on the provisions of this subchapter.

(Nov. 1, 1975, D.C. Law 1-33, title II, § 214, 22 DCR 2529.)

§ 45-1655. Penalties.

(a) Any person who—

(1) demands or receives any rent for a rental unit in excess of the maximum allowable rent applicable to that rental unit under the provisions of this subchapter, or

(2) substantially reduces or eliminates related services previously provided for a rental unit, shall be held liable by the Rent Administrator for treble the amount by which the rent exceeded the applicable rent ceiling or for \$50, whichever is greater.

(b) Any person who—

(1) willfully makes a false or misleading statement in any registration statement or other statement filed under this subchapter, or

(2) willfully commits any other action in violation of this subchapter, or willfully fails to do anything required under this subchapter; shall be fined not more than \$5,000 for each violation. (Nov. 1, 1975, D.C. Law 1-33, title II, § 215, 22 DCR 2531.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45-1644.

TITLE III.—CONVERSION OF RENTAL HOUSING

§ 45-1661. Sale of single family housing accommodation.

Any owner of a single family housing accommodation may sell such housing accommodation to a purchaser but only after such owner has given the

tenant of such housing accommodation an opportunity to purchase such housing accommodation at a price which represents a bonafide offer of sale. The tenant shall be afforded at least 45 days within which to accept such offer of sale. (Nov. 1, 1975, D.C. Law 1-33, title III, § 301, 22 DCR 2532.)

EFFECTIVE DATE

See note under § 45-1631.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45-1653.

§ 45-1662. Condominium conversion.

(a) Every tenant of a housing accommodation which the landlord seeks to convert from a rental basis to a condominium or cooperative, shall be notified in writing no less than 180 days before the conversion thereof. The landlord of such a housing accommodation shall make to each tenant a bonafide offer of sale of the unit which such tenant occupies, and the tenant shall be afforded no less than 60 days within which to accept. No tenant shall be served with a notice to vacate until 150 days after he first receives notice of the landlord's intention to convert, nor shall the notice to vacate be served prior to the expiration of the aforesaid 60-day period or receipt of the tenant's written rejection of the bonafide offer of sale of the unit which he occupies, whichever occurs first. Nothing in this subsection shall be construed to permit conversion of rental units to condominium units where otherwise prohibited by law.

(b) The tenant of every housing accommodation which the landlord seeks to substantially rehabilitate shall be notified in writing at least 120 days prior to commencement of rehabilitation. No tenant shall be served with a notice to vacate until 90 days after he first received written notice of the landlord's intention to rehabilitate, and no landlord shall commence actual (physical) rehabilitation until the 120-day notice period has expired. The written notice of intent to substantially rehabilitate shall include the information required under section 45-1642(b), and a statement that the Rent Administrator has approved the substantial rehabilitation according to section 45-1650 and information indicating tenant may obtain a copy of the registration form at the office of the Rent Administrator, and the address of the Rent Administrator. (Nov. 1, 1975, D.C. Law 1-33, title III, § 302, 22 DCR 2532.)

CROSS REFERENCE

Condominium conversion, moratorium, authority of Council, see § 5-928a.

TITLE IV.—MISCELLANEOUS

§ 45-1671. Construction.

Except as to the appointment of members of the Rental Accommodations Commission, the provisions of this act shall be deemed as a continuation of Act 1-35, adopted on July 22, 1975 by the Council and approved by the Mayor on July 25, 1975, and shall be deemed to have been in effect as of the effective date of said Act 1-35. (Nov. 1, 1975, D.C. Law 1-33, title IV, § 401, 22 DCR 2534.)

EFFECTIVE DATE

See note under § 45-1631.

§ 45-1672. Transfer of property, records, and unexpended balances—Continuation of determinations etc.

(a) There are hereby authorized to be transferred to the Rent Administrator and the Commission for use in the administration of the functions of those offices, the property, records, and unexpended balances of appropriations and other funds which related primarily to the functions so transferred.

(b) Any determination, rule, or order, contract, compact, designation or other action made by the District of Columbia Housing Rent Commission shall, except to the extent modified or made inapplicable by the subchapter, continue in effect. (Nov. 1, 1975, D.C. Law 1-33, title IV, § 402, 22 DCR 2534.)

§ 45-1673. Judicial review.

(a) Any person or class of persons aggrieved by a decision of the Commission, or by any failure on the part of the Commission to act, may seek judicial review of such decision or failure by filing a petition for review in the District of Columbia Court of Appeals. The Commission on its own initiative, or the Rent Administrator, may commence a civil action to enforce any rule or decision of the Commission or Rent Administrator, as the case may be. Such an action brought by the Commission or Rent Ad-

ministrator, as the case may be, shall be brought in the Superior Court of the District of Columbia.

(b) The Superior Court, in issuing any order in any action brought under this section, may award costs of litigation (including a reasonable attorney's fee) to any successful party. (Nov. 1, 1975, D.C. Law 1-33, title IV, § 403, 22 DCR 2535.)

NOTES TO DECISIONS UNDER PRIOR LAW

Jurisdiction

By specifically vesting the Superior Court with jurisdiction to review Rent Commission's decisions, Congress gave statutory recognition to authority of trial court to use its equity power in rent control field. *Columbia Realty Venture v. District of Columbia Housing Rent Commission* (D.C. App. 1975, 350 A.2d 120).

District of Columbia Court of Appeals is without jurisdiction to review Housing Rent Commission's voiding of hearing examiner's order allowing increased cost of operating property to be passed through to tenants due to landlord's failure to serve order on parties and Commission within 45 days after decision; review thereof would be in the Superior Court. *Id.*

§ 45-1674. Severability.

If any provision of this subchapter, or any section, sentence, clause, phrase or word or the application thereof, in any circumstances is held invalid, the validity of the remainder of the subchapter and of the application of any such provision, section, sentence, clause, phrase or word shall not be affected. (Nov. 1, 1975, D.C. Law 1-33, title IV, § 405, 22 DCR 2536.)

TITLE 46.—SOCIAL SECURITY

Chapter 3.—UNEMPLOYMENT COMPENSATION

Sec.

46-327. Pregnancy.

§ 46-301. Definitions.

As used in this chapter, unless the context indicates otherwise—

(b) * * *

* * * *

(5) The term "employment" shall not include—

* * * *

(R) service performed after April 1, 1962, in the employ of a public international organization designated by the President as entitled to enjoy the privileges, exemptions, and immunities provided under the International Organizations Immunities Act (22 U.S.C. 288—288f-2).

* * * *

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established By Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

In subsec. (b) (5) (R), "(22 U.S.C. 288—288f-2)" has been substituted for "(22 U.S.C. 288—288f-1)" to reflect the addition of another section to the International Organizations Immunities Act by Act Nov. 27, 1973, Pub. L. 93-161, 87 Stat. 635.

NOTES TO DECISIONS

Boundaries of District of Columbia

Washington National Airport is within boundaries of Commonwealth of Virginia and not within those of District of Columbia; thus employer of pilot, whose base of operations was the airport, correctly reported pilot's wages to Virginia for unemployment compensation purposes and pilot is not entitled to unemployment benefits from the District of Columbia. *J. L. Bryan v. District Unemployment Compensation Board* (D.C. App. 1975, 342 A.2d 45).

Employment—Interstate arrangements

Where claimant, by combining his military service with his later private employment in Ohio, claims to be qualified for increased benefits under the Interstate Arrangement for Combining Employment and Wages, his military service constitutes "employment" under interstate arrangement entered into by District of Columbia, and since the District is the paying state and Ohio is the transferring state, Ohio law governs whether claimant's employment is subject to transfer to the District so as to qualify him for increased benefits. *Benjamin Rose Institute v. District Unemployment Compensation Board* (D.C. App. 1975, 338 A.2d 104).

§ 46-303. Employer contributions.

* * * *

(c) FUTURE RATES BASED ON BENEFIT EXPERIENCE.—

* * * *

(10) At least one month prior to the final date upon which the first contributions for any calendar year or part thereof become due from any employer at a contribution rate determined under this subsection, the Board shall notify such employer of his rate of contributions and of the benefit charges upon which such rate was based. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to his last-known address, or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and a redetermination, setting forth his reasons therefor. Upon receipt of such application, the Board shall voluntarily adjust such matter or shall grant an opportunity for a fair hearing and promptly notify the employer thereof. All such hearings shall be held before a Contribution Rate Review Committee composed of three members who shall be employees of the Board and appointed by the Board. The findings and decision of this Committee shall not be subject to review by the District Auditor. No employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability of his account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to section 46-311, except on the ground that the services on the basis of which such benefits were found to be chargeable do not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination, or decision or to any other proceedings under this chapter in which the character of such services was determined. The employer shall be promptly notified in writing of the Board's denial of his application or of the Board's redetermination. An employer aggrieved by the Board's decision may seek review of such determination in the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act [D.C. Code, secs. 1-1501 to 1-1510].

* * * *

(j) Notwithstanding any of the provisions of this chapter, no employer's experience rating account shall be charged and no employer shall be liable for payments in lieu of contributions with respect to extended benefit payments which are wholly reimbursed to the District of Columbia by the Federal Government. (As amended Dec. 7, 1974, Pub. L. 93-515, title III, § 301(1), 88 Stat. 1617; May 13, 1975, D.C. Law 1-2, § 1(1), 21 DCR 3941.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established By Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Act May 13, 1975, D.C. Law 1-2, added subsec. (j).

1974—Section 301(1) of Act Dec. 7, 1974, Pub. L. 93-515, amended subsec. (c) (10) by substituting "The employer shall be promptly notified in writing of the Board's denial of his application or of the Board's redetermination. An employer aggrieved by the Board's decision may seek review of such determination in the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act [D.C. Code, secs. 1-1501 to 1-1510]." for the last three sentences which read: "The employer shall be promptly notified of the Board's denial of his application or of the Board's redetermination, both of which shall become final unless, within thirty days after the mailing of such notice thereof to his last-known address, or in the absence of mailing, within thirty days after the delivery of such notice, a petition for judicial review is filed in the Superior Court of the District of Columbia. In any proceedings under this subsection the findings of the Board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such proceedings shall be given precedence over all other civil cases except cases arising under section 46-312 and under section 36-501."

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2.2 of Act May 13, 1975, D.C. Law 1-2, provided: "The amendments [to §§ 46-303, 46-307] made by this act shall take effect immediately upon passage of this act."

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 302 of Act Dec. 7, 1974, Pub. L. 93-515, title III, 88 Stat. 1616, provided: "The amendments [to §§ 46-303, 46-312] made by section 302¹ of this title shall take effect with respect to petitions filed after the date of enactment of this title for review of decisions or orders."

NOTES TO DECISIONS

Construction

As this section clearly and unambiguously provided that the standard contribution rate for unemployment compensation insurance should be 2.7% except that after December 31, 1971, each employer "newly subject" to this chapter should pay contributions at a rate later determined to be 1.1%, and as petitioner first became subject to the chapter in October of 1969, petitioner was not "newly" subject to the chapter and was not entitled to a reduced rate until it had been an employer for a sufficient period to qualify for a reduced rate based on experience; further, the statutory classification was reasonable and the act was therefore constitutional as applied to petitioner. *Temporaries Incorporated v. District Unemployment Compensation Board* (D.C. App. 1973, 304 A. 2d 14).

§ 46-304. Method of paying employer contributions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established By Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 46-307. Amount and duration of benefits.

* * * * *

(g) EXTENDED BENEFITS PROGRAM.—Notwithstanding any other provisions of this section, this subsection provides a program of extended benefits on and after January 1, 1972.

* * * * *

(7) Effective with respect to compensation for weeks of unemployment beginning before December

31, 1976, and beginning after December 31, 1974, the determination of whether there has been:

(1) a State "on" or "off" indicator for the District beginning or ending any extended benefit period shall be made under this subsection as if this subsection did not contain paragraphs (1) (D) (i) and (1) (E) (i) thereof, and

(2) a national "on" or "off" indicator beginning or ending any extended benefit period shall be made under the provisions of this subsection as if the phrase "4.5 percentum" contained in paragraphs (1) (B) and (1) (C) thereof read "4.0 percentum".

(As amended May 13, 1975, D.C. Law 1-2, § 1(2), 21 DCR 3941.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established By Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act May 13, 1975, D.C. Law 1-2, amended subsec. (g) by adding at the end thereof a new par. (7).

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 46-303.

§ 46-309. Eligibility for benefits.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established By Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Available for work

Claimant's enrollment as a day student at a state university for nine hours of classes per week is sufficient to render him ineligible for unemployment benefits since by not devoting full time to seeking other jobs claimant failed to make himself available for reemployment. *B. L. Wood v. District Unemployment Compensation Board* (D.C. App. 1975, 334 A.2d 188).

Evidence of availability

Evidence that claimant, who had been employed as a saleswoman in a department store prior to voluntarily leaving her employment in the District of Columbia and going to rural area in Virginia to live, was willing to drive 10 or 15 miles from her home to work but was unwilling to drive 25 miles to nearest sizable town where there were many opportunities to find work sustained determination that claimant was not available for work and was not entitled to unemployment compensation. *M. L. Hollar v. District of Columbia Unemployment Compensation Board* (D.C. App. 1974, 317 A. 2d 868).

Evidence did not support decision of Unemployment Compensation Board that unemployment compensation claimant who lived one mile from public transportation, made constant effort to obtain employment, registered with both local and state employment agencies and made numerous job contacts had not been available for work during period for which benefits were claimed and was not entitled to unemployment benefits. *M. L. Hill v. District Unemployment Compensation Board* (D.C. App. 1973, 302 A. 2d 226).

Federal employees

Where express terms of statute relating to assignment of federal service and wages required that the Defense Department, which was former employer of unemployment compensation claimant, who had worked at the Pentagon, had no other choice than to assign claimant's

¹ So in original. Probably should be section "301".

federal service and wages to Virginia, the state where his last duty station was located, and where statute made it clear that a state agency had no authority to set aside a federal agency's certification with respect to the last official duty station, claimant could not recover unemployment compensation from the District of Columbia, and fact that letterheads on official stationery of the Secretary and Assistant Secretaries of Defense identified their mailing address as a Washington, D.C. postal zone would not change the result. *J. D. Hemenway v. District Unemployment Compensation Board* (D.C. App. 1974, 326 A. 2d 776).

Job contacts

Neither unemployment compensation statute nor the Unemployment Compensation Board's regulations require a claimant for unemployment benefits to make, as a condition precedent, at least three job contacts weekly. *M. L. Hill v. District Unemployment Compensation Board* (D.C. App. 1973, 302 A. 2d 226).

Official notice

Agency must notify the parties to an administrative proceeding that a material fact is being officially noticed so that the parties have an opportunity to rebut that fact. *P. E. Carey v. District Unemployment Compensation Board* (D.C. App. 1973, 304 A. 2d 18).

Proposed findings and decision of District Unemployment Compensation Board denying unemployment compensation benefits on ground, inter alia, that claimant was not available for work due to her refusal to accept the aid of the United States Employment Service did not notify claimant that the Board was invoking its prerogative to take official notice of a nonrecord fact consisting of agency record, and thus claimant did not waive her right to contest that fact by failing to request an opportunity to rebut the evidence. *Id.*

§ 46-310. Disqualification for benefits.

(h) The eligibility of any individual, who is or has recently been pregnant, for benefits under this chapter, shall be determined under the same standards and procedures as for any other claimant under this chapter. (As amended Nov. 1, 1975, D.C. Law 1-34, § 4, 22 DCR 2553.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established By Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Subsec. (h) amended generally by act Nov. 1, 1975, D.C. Law 1-34.

EFFECTIVE DATE OF 1975 AMENDMENT

See Effective Date note under section 46-327.

NOTES TO DECISIONS

Misconduct

Alleged company rule prohibiting performance of paid overtime work at home without supervisor's approval, which was allegedly violated and thus formed basis of finding of petitioner's misconduct in unemployment compensation proceeding, falls short of standard requiring that conduct be act of wanton or willful disregard of employer's interest, deliberate violation of employer's rules, disregard of standards of behavior which employer has right to expect of employer, or negligence in such degree or recurrence as to manifest culpability, wrongful intent, or evil design, or show intentional or substantial disregard of employer's interest or of employee's duties and obligations to employer. *C. M. Green v. District Unemployment Compensation Board* (D.C. App. 1975, 346 A.2d 252).

In unemployment compensation proceeding, where petitioner was denied unemployment benefits on ground she violated alleged company rule against doing overtime work at home without supervisor's approval even though

employer testified petitioner was discharged from job on grounds of falsified overtime records and specifically disavowed Board's ground as being basis for dismissal, Board should not have made independent judgment that other grounds existed sufficient to support finding of misconduct which, in Board's opinion, should be cause for employer to discharge employee and deny unemployment benefits on that ground. *Id.*

Separation from employment as wage rate director for international union due to affirmation of conviction for violating Landrum-Griffin Act by falsifying financial records which union was required by law to keep, which conviction precluded employment with union for five years, was tantamount to a discharge for misconduct so as to render wage rate director, disqualified for unemployment compensation. *M. Budzanoski v. District Unemployment Compensation Board* (D.C. App. 1974, 326 A. 2d 243).

Where outside salesman, despite warnings from his supervisor, on several occasions cut short his workday to attend to personal affairs without first receiving permission and on those occasions he had, without authorization, released two new employees who had been assigned to him to learn his duties, route and customers, employee breached his contractual duty to devote his entire time, attention and energies to his employment and was guilty of misconduct as a matter of law, justifying denial of unemployment benefits for five weeks. *G. R. Colvin v. District Unemployment Compensation Board* (D.C. App. 1973, 306 A. 2d 662).

—Burden of proof

Claimant for unemployment compensation was not denied procedural due process on theory that he was not instructed that burden of proof was on employer, which alleged misconduct of employee as ground for discharge, and that, in absence of affirmative proof of such misconduct, employee was not obliged to offer any testimony nor would any misconduct be presumed from his failure to testify, where claimant had been informed by appeals examiner prior to hearing that burden was on employer, he had been represented by counsel at both hearings and regulation respecting burden of proof was matter of public record. *G. R. Colvin v. District Unemployment Compensation Board* (D.C. App. 1973, 306 A. 2d 662).

—Most recent work

Even though claimant was employed as president of local union at time he was convicted of violating Landrum-Griffin Act by falsifying financial records which union was required to keep and did not commence employment as wage rate director for international union until ten months after his conviction, where claimant held both positions at time his conviction was affirmed, both jobs were claimant's "most recent work" within meaning of statute rendering an individual who is discharged for misconduct occurring in the course of his most recent work ineligible for unemployment benefits and claimant's alleged misconduct occurred during both his employment as wage rate director and as union president. *M. Budzanoski v. District Unemployment Compensation Board* (D.C. App. 1974, 326 A. 2d 243).

§ 46-311. Determination of claims.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Evidence of availability

Evidence did not support decision of Unemployment Compensation Board that unemployment compensation claimant who lived one mile from public transportation, made constant effort to obtain employment, registered with both local and state employment agencies and made numerous job contacts had not been available for work during period for which benefits were claimed and was not entitled to unemployment benefits. *M. L. Hill v. District Unemployment Compensation Board* (D.C. App. 1973, 302 A. 2d 226).

Final decision

District Unemployment Compensation Board is authorized to provide by a procedural rule that appeals examiner's decision constitutes the proposed findings and decision of the Board and in so doing the Board should at the same time the appeals examiner's decision is issued provide a time limit in which to file with the Board objections to the appeals examiner's decision with a date for oral argument before the Board or any such objections set at that time or at a later date. *P. E. Carey v. District Unemployment Compensation Board* (D.C. App. 1973, 304 A. 2d 18).

Findings

Findings and conclusions of the Unemployment Compensation Board are conclusive upon the Court of Appeals if supported by evidence in whole of the administrative record. *M. L. Hill v. District Unemployment Compensation Board* (D.C. App. 1973, 302 A. 2d 226).

Official notice

Agency must notify the parties to an administrative proceeding that a material fact is being officially noticed so that the parties have an opportunity to rebut that fact. *P. E. Carey v. District Unemployment Compensation Board* (D.C. App. 1973, 304 A. 2d 18).

Proposed findings and decision of District Unemployment Compensation Board denying unemployment compensation benefits on ground, inter alia, that claimant was not available for work due to her refusal to accept the aid of the United States Employment Service did not notify claimant that the Board was invoking its prerogative to take official notice of a nonrecord fact consisting of agency record, and thus claimant did not waive her right to contest that fact by failing to request an opportunity to rebut the evidence. *Id.*

Time to appeal

Under this section providing that appeal to Unemployment Compensation Board from initial determination shall be filed within ten days after notification thereof, or after the date such notification was mailed to claimant's last known address, as amended to provide that only in the absence of mailing would the actual date of delivery be used, Board had no authority to extend limitation time as to petitioner who filed his appeal from determination that he had received benefits to which he was not entitled three days beyond the ten-day time limit, even though petitioner explained failure to file timely appeal as due to death of his wife. *G. Gaskins, Sr. v. District Unemployment Compensation Board* (D.C. App. 1974, 315 A. 2d 567).

§ 46-312. Court review.

Any person aggrieved by the decision of the Board may seek review of such decision in the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act [D.C. Code, secs. 1-1501 to 1-1510]. (As amended Dec. 7, 1974, Pub. L. 93-515, title III, § 301(2), 88 Stat. 1617.)

AMENDMENT

1974—Section 301(2) of Act Dec. 7, 1974, Pub. L. 93-515, amended section generally. For provisions prior to amendment, see main 1973 ed. of the Code.

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 46-303.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 46-311.

§ 46-313. Administration.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 46-314. Method of paying administrative expenses.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 46-315. District Unemployment Compensation Board.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 46-316. Reciprocal arrangements.**NOTES TO DECISIONS****Interstate claims cases**

Where claimant, by combining his military service with his later private employment in Ohio, claims to be qualified for increased benefits under the Interstate Arrangement for Combining Employment and Wages, his military service constitutes "employment" under interstate arrangement entered into by District of Columbia, and since the District is the paying state and Ohio is the transferring state, Ohio law governs whether claimant's employment is subject to transfer to the District so as to qualify him for increased benefits. *Benjamin Rose Institute v. District Unemployment Compensation Board* (D.C. App. 1975, 338 A.2d 104).

§ 46-317. Records and reports.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 46-326. Commissioner of the District of Columbia.**SUCCESSION IN GOVERNMENT**

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 46-327. Pregnancy.

There shall be no presumption that a person who is pregnant is physically unable to work, even when pregnancy was an issue in the separation from employment. (Aug. 28, 1935, ch. 794, § 28, as added Nov. 1, 1975, D.C. Law 1-34, § 3, 22 DCR 2553.)

EFFECTIVE DATE

Section 6 of act Nov. 1, 1975, D.C. Law 1-34, provided: "This act [enacting § 46-327 and amending § 46-310] shall be effective at the end of the period provided for Congressional review by section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

FINDINGS

Section 2 of act Nov. 1, 1975, D.C. Law 1-34, provided: "The Council of the District of Columbia finds that persons who are or who have recently been pregnant are subject to special and unfair disadvantages in obtaining unemployment compensation benefits."

REPEAL OF INCONSISTENT RULES AND REGULATIONS

Section 5 of act Nov. 1, 1975, D.C. Law 1-34, provided: "The District of Columbia Rules and Regulations, Title 18, section 300.4, and any other regulations, policies, and practices of the District Unemployment Compensation Board not consistent with this act, are repealed or prohibited."

TITLE 47.—TAXATION AND FISCAL AFFAIRS

Chap.		Sec.
2A. Budget and Financial Management—Bor-		
rowing	47-221	
6A. Real Property Tax.....	47-621	

Chapter 1.—GENERAL PROVISIONS

Sec.	
47-120. Auditor—Appointment, tenure, and compensa-	
tion—Duties—Accessibility of records—Reports.	
47-120-1. Annual audit of accounts and operations of	
District government by General Accounting	
Office—Accessibility of records—Reports—	
Compliance with audit recommendations.	
47-130b. General and special funds.	

§ 47-101. Fiscal year for District of Columbia—Com-

mencement.

The fiscal year of the District shall, beginning on October 1, 1976, commence on the first day of October of each year and shall end on the thirtieth day of September of the succeeding calendar year. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 441, 87 Stat. 798; Aug. 29, 1974, Pub. L. 93-395, § 1(3), 88 Stat. 793.)

AMENDMENT

1974—Act Aug. 29, 1974, Pub. L. 93-395, amended section generally. Prior to amendment the section read: "The fiscal year of the District shall begin on the first day of July and shall end on the thirtieth day of June of the succeeding calendar year. Such fiscal year shall also constitute the budget and accounting year."

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

PRIOR LAW

A prior section based on Leg. Assem., Aug. 22, 1871, ch. 65, p. 78, provided: "The fiscal year of the District of Columbia shall commence on the first day of July in each and every year until otherwise provided by law."

TRANSITION TO NEW FISCAL YEAR

Section 502 of Act July 12, 1974, Pub. L. 93-344, title V, 88 Stat. 321, provided:

"(a) As soon as practicable, the President shall prepare and submit to the Congress—

"(1) after consultation with the Committees on Appropriations of the House of Representatives and the Senate, budget estimates for the United States Government for the period commencing July 1, 1976, and ending on September 30, 1976, in such form and detail as he may determine; and

"(2) proposed legislation he considers appropriate with respect to changes in law necessary to provide authorizations of appropriations for that period.

"(b) The Director of the Office of Management and Budget shall provide by regulation, order, or otherwise for the orderly transition by all departments, agencies, and instrumentalities of the United States Government and the government of the District of Columbia from the use

of the fiscal year in effect on the date of enactment of this Act to the use of the new fiscal year prescribed by section 237(a) (2) of the Revised Statutes [31 U.S.C. 1020 (a) (2)]. The Director shall prepare and submit to the Congress such additional proposed legislation as he considers necessary to accomplish this objective.

"(c) The Director of the Office of Management and Budget and the Director of the Congressional Budget Office jointly shall conduct a study of the feasibility and advisability of submitting the Budget or portions thereof, and enacting new budget authority or portions thereof, for a fiscal year during the regular session of the Congress which begins in the year preceding the year in which such fiscal year begins. The Director of the Office of Management and Budget and the Director of the Congressional Budget Office each shall submit a report of the results of the study conducted by them, together with his own conclusions and recommendations, to the Congress not later than 2 years after the effective date of this subsection."

§ 47-106. Apportionment of appropriations for con-

tingent and miscellaneous expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-112. Disbursing officer — Appointment — Bond —

Duties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-113a. Appointment of deputy disbursing officer

and assistant disbursing officers—Compensation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-113c. Penalties for official misconduct of disburs-

ing officers—Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-120. Auditor—Appointment, tenure, and compen-

sation—Duties—Accessibility of records—Reports.

(a) There is established for the District of Columbia the Office of District of Columbia Auditor who

shall be appointed by the Chairman, subject to the approval of a majority of the Council. The District of Columbia Auditor shall serve for a term of six years and shall be paid at a rate of compensation as may be established from time to time by the Council.

(b) The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he may prescribe. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents and records, the District of Columbia Auditor shall give due regard to generally accepted principles of auditing including the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices.

(c) The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit.

(d) The District of Columbia Auditor shall submit his audit reports to the Congress, the Mayor, and the Council. Such reports shall set forth the scope of the audits conducted by him and shall include such comments and information as the District of Columbia Auditor may deem necessary to keep the Congress, the Mayor, and the Council informed of the operations to which the reports relate, together with such recommendations with respect thereto as he may deem advisable.

(e) The Council shall make such report, together with such other material as it deems pertinent thereto, available for public inspection.

(f) The Mayor shall state in writing to the Council, within an appropriate time, what action he has taken to effectuate the recommendations made by the District of Columbia Auditor in his reports. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 455, 87 Stat. 803.)

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

PRIOR LAW

A prior section based on Leg. Assem., Aug. 23, 1871, ch. 108, § 10, p. 146, provided for the duties of the Auditor of the District.

CROSS REFERENCES

Annual audit of Boxing and Wrestling Commission, see § 2-1237.

Audit of certain expenditures of President of University of the District of Columbia, see § 31-1721.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-120-1.

§ 47-120-1. Annual audit of accounts and operations of District government by General Accounting Office—Accessibility of records—Reports—Compliance with audit recommendations.

(a) In addition to the audit carried out under section 47-120, the accounts and operations of the District government shall be audited annually by the General Accounting Office in accordance with such principles and procedures, and in such detail, and under such rules and regulations as may be prescribed by the Comptroller General of the United States. In the determination of the auditing procedures to be followed and the extent of the examination of vouchers and other documents, the Comptroller General shall give due regard to generally accepted principles of auditing, including consideration of the effectiveness of the accounting organizations and systems, internal audit and control, and related administrative practices. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the District and necessary to facilitate the audit, and such representatives shall be afforded full facilities for auditing the accounts and operations of the District government.

(b) (1) The Comptroller General shall submit his audit reports to the Congress, the Mayor, and the Council. The reports shall set forth the scope of the audits and shall include such comments and information as the Comptroller General may deem necessary to keep the Congress, the Mayor, and the Council informed of the operations to which the reports relate, together with such recommendations with respect thereto as the Comptroller General may deem advisable.

(2) After the Mayor has had an opportunity to be heard, the Council may make such report, together with such other material as it deems pertinent thereto, available for public inspection.

(3) The Mayor, within ninety days after receipt of the audit from the Comptroller General, shall state in writing to the Council, with a copy to the Congress, what has been done to comply with the recommendations made by the Comptroller General in the report. (Dec. 24, 1973, Pub. L. 93-198, title VII, § 736, 87 Stat. 823.)

CODIFICATION

Section is also classified to 31 U.S.C. 61.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

§ 47-120a. Liability of auditor or employees—Exceptions—Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon

Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-122. Chief clerk to act in event of absence or disability of auditor.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-125. Disbursing officer's checks—Payment to holders of outstanding checks.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-130b. General and special funds.

The general fund of the District shall be composed of those District revenues which on the effective date of this title are paid into the Treasury of the United States and credited either to the general fund of the District or its miscellaneous receipts, but shall not include any revenues which are applied by law to any special fund existing on the date of enactment of this title. The Council may from time to time establish such additional special funds as may be necessary for the efficient operation of the government of the District. All money received by any agency, officer, or employee of the District in its or his official capacity shall belong to the District government and shall be paid promptly to the Mayor for deposit in the appropriate fund. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 450, 87 Stat. 803.)

REFERENCE IN TEXT

"This title", referred to in the text, is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables. For the effective date of title IV, see the Effective Date note set out below.

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this section is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

§ 47-135. Investment of District of Columbia's funds in United States Government securities—Deposit of interest to credit of appropriate fund—Sale and exchange of such securities.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-136. Maintenance and repairs of vehicles—Working fund.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-137. Working fund for printing, duplicating, and photographing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-138. Restoration of lapsed appropriations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-140. Trust funds held by District of Columbia—Lack of communication by owners of fund—Notice to owners that claims will be barred.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-141. Publication of notice relating to unclaimed funds—Form and contents of notice—Deposit of unclaimed funds in the Treasury of the United States.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-142. Small sums—Exemptions from notice requirements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-143. Deductions of expenses upon refunds to depositors—Deposit of deductions in the Treasury of the United States.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-144. "Commissioner" defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-145. Use of appropriated funds to promote demonstrations to influence legislation or other governmental action—Exception.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—BUDGET ESTIMATES

§ 47-204. Certain expenses of United States District Court for the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-204b. Certain expenses of United States Court of Appeals for the District of Columbia Circuit.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-205. Commissioner's annual estimates—To include report of assignment of certain market employees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-209. Estimates for assessment of real estate.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-210. Estimates for water department.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-211. Estimates for expenses of District—Order of arrangement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-211a. Estimates and information concerning funds available to District from Federal and private grants.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2A.—BUDGET AND FINANCIAL MANAGEMENT—BORROWING

SUBCHAPTER I.—BUDGET AND FINANCIAL MANAGEMENT

Sec.

- 47-221. Submission of annual budget.
- 47-222. Multiyear plan.
- 47-223. Multiyear capital improvements plan.
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- 47-225. Consistency of budget, accounting, and personnel systems.
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SUBCHAPTER II.—BORROWING

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SUBCHAPTER I.—BUDGET AND FINANCIAL MANAGEMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 31-1905.

§ 47-221. Submission of annual budget.

(a) At such time as the Council may direct, the Mayor shall prepare and submit to the Council each year, and make available to the public, an annual budget for the District of Columbia government which shall include—

(1) the budget for the forthcoming fiscal year in such detail as the Mayor determines necessary to reflect the actual financial condition of the District government for such fiscal year, and specify the agencies and purposes for which funds are being requested; and which shall be prepared on the assumption that proposed expenditures resulting from financial transactions undertaken on either an obligation or cash-outlay basis, for such

fiscal year shall not exceed estimated resources from existing sources and proposed resources;

(2) an annual budget message which shall include supporting financial and statistical information on the budget for the forthcoming fiscal year and information on the approved budgets and expenditures for the immediately preceding three fiscal years;

(3) a multiyear plan for all agencies of the District government as required under section 47-222;

(4) a multiyear capital improvements plan for all agencies of the District government as required under section 47-223;

(5) a program performance report comparing actual performance of as many programs as is practicable for the last completed fiscal year against proposed goals for such programs for such year, and, in addition, presenting as many qualitative or quantitative measures of program effectiveness as possible (including results of statistical sampling or other special analyses), and indicating the status of efforts to comply with the reports of the District of Columbia Auditor and the Comptroller General of the United States;

(6) an issue analysis statement consisting of a reasonable number of issues, identified by the Council in its action on the budget in the preceding fiscal year, having significant revenue or budgetary implications, and other similar issues selected by the Mayor, which shall consider the cost and benefits of alternatives and the rationale behind action recommended or adopted; and

(7) a summary of the budget for the forthcoming fiscal year designed for distribution to the general public.

(b) The budget prepared and submitted by the Mayor shall include, but not be limited to, recommended expenditures at a reasonable level for the forthcoming fiscal year for the Council, the District of Columbia Auditor, the District of Columbia Board of Elections and Ethics, the District of Columbia Judicial Nomination Commission, the Zoning Commission of the District of Columbia, the Public Service Commission, the Armory Board, and the Commission on Judicial Disabilities and Tenure.

(c) The Mayor from time to time may prepare and submit to the Council such proposed supplemental or deficiency budget recommendations as in his judgment are necessary on account of laws enacted after transmission of the budget or are otherwise in the public interest. The Mayor shall submit with such proposals a statement of justifications, including reasons for their omission from the annual budget. Whenever such proposed supplemental or deficiency budget recommendations are in an amount which would result in expenditures in excess of estimated resources, the Mayor shall make such recommendations as are necessary to increase resources to meet such increased expenditures. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 442, 87 Stat. 798; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

AMENDMENT

1974—Act Aug. 14, 1974, Pub. L. 93-376, amended subsec. (b) by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE

Section 771 of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided in part that this chapter is effective on Jan. 2, 1975, if a majority of the registered qualified electors in the District of Columbia voting on the charter issue in the charter referendum accepted the charter set out in title IV of such Act. The charter was approved by the voters on May 7, 1974.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this chapter.

CROSS REFERENCES

Annual Federal payment, duties of Mayor and Council in preparation of budget, see § 47-2501c.

District of Columbia courts' budget, see § 445 of title 11, Appendix.

University of the District of Columbia budget, see § 31-1716.

§ 47-222. Multiyear plan.

The Mayor shall prepare and include in the annual budget a multiyear plan for all agencies included in the District budget, for all sources of funding, and for such program categories as the Mayor identifies. Such plan shall be based on the actual experience of the immediately preceding three fiscal years, on the approved current fiscal year budget, and on estimates for at least the four succeeding fiscal years. The plan shall include, but not be limited to, provisions identifying—

(1) future cost implications of maintaining programs at currently authorized levels, including anticipated changes in wage, salary, and benefit levels;

(2) future cost implications of all capital projects for which funds have already been authorized, including identification of the amount of already appropriated but unexpended capital project funds;

(3) future cost implications of new, improved, or expanded programs and capital project commitments proposed for each of the succeeding four fiscal years;

(4) the effects of current and proposed capital projects on future operating budget requirements;

(5) revenues and funds likely to be available from existing revenue sources at current rates or levels;

(6) the specific revenue and tax measures recommended for the forthcoming fiscal year and for the next following fiscal year necessary to balance revenues and expenditures;

(7) the actuarial status and anticipated costs and revenues of retirement systems covering District employees; and

(8) total debt service payments in each fiscal year in which debt service payments must be made for all bonds which have been or will be issued, and all loans from the United States Treasury which have been or will be received, to finance the total cost on a full funding basis of all projects listed in the capital improvements plan prepared under section 47-223; and for each such fiscal year, the percentage relationship of the total debt service payments (with payments for issued and

proposed bonds and loans from the United States Treasury, received or proposed, separately identified) to the bonding limitation for the current and forthcoming fiscal year as specified in section 47-228(b).

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 443, 87 Stat. 799.)

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-221.

§ 47-223. Multiyear capital improvements plan.

The Mayor shall prepare and include in the annual budget a multiyear capital improvements plan for all agencies of the District which shall be based upon the approved current fiscal year budget and shall include—

(1) the status, estimated period of usefulness, and total cost of each capital project on a full funding basis for which any appropriation is requested or any expenditure will be made in the forthcoming fiscal year and at least four fiscal years thereafter, including an explanation of change in total cost in excess of 5 per centum for any capital project included in the plan of the previous fiscal year;

(2) an analysis of the plan, including its relationship to other programs, proposals, or elements developed by the Mayor as the central planning agency for the District pursuant to section 1-163;

(3) identification of the years and amounts in which bonds would have to be issued, loans made, and costs actually incurred on each capital project identified; and

(4) appropriate maps or other graphics.

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 444, 87 Stat. 800.)

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1007, 47-221, 47-222.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in section 71f of title 40, United States Code.

§ 47-224. Adoption of budget by Council—Enactment of appropriations by Congress.

The Council, within fifty calendar days after receipt of the budget proposal from the Mayor, and after public hearing, shall by act adopt the annual budget for the District of Columbia government. Any supplements thereto shall also be adopted by act by the Council after public hearing. Such budget so adopted shall be submitted by the Mayor to the President for transmission by him to the Congress. No amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act. Notwithstanding any other provision of this Act, the Mayor shall not transmit any annual budget or amendments or supplements thereto, to the President of the United States until the completion of the budget procedures contained in this Act. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 446, 87 Stat. 801.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-144, section 445 of title 11 Appendix, 47-247.

§ 47-225. Consistency of budget, accounting, and personnel systems.

The Mayor shall implement appropriate procedures to insure that budget, accounting, and personnel control systems and structures are synchronized for budgeting and control purposes on a continuing basis. No employee shall be hired on a full-time or part-time basis unless such position is authorized by Act of Congress. Employees shall be assigned in accordance with the program, organization, and fund categories specified in the Act of Congress authorizing such position. Hiring of temporary employees and temporary employee transfers among programs shall be consistent with applicable Acts of Congress and reprogramming procedures to insure that costs are accurately associated with programs and sources of funding. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 447, 87 Stat. 801.)

EFFECTIVE DATE

See note under § 47-221.

§ 47-226. Financial duties of Mayor.

Subject to the limitations in section 47-228, the Mayor shall have charge of the administration of the financial affairs of the District and to that end he shall—

(1) supervise and be responsible for all financial transactions to insure adequate control of revenues and resources and to insure that appropriations are not exceeded;

(2) maintain systems of accounting and internal control designed to provide—

(A) full disclosure of the financial results of the District government's activities,

(B) adequate financial information needed by the District government for management purposes,

(C) effective control over and accountability for all funds, property, and other assets,

(D) reliable accounting results to serve as the basis for preparing and supporting agency budget requests and controlling the execution of the budget;

(3) submit to the Council a financial statement in any detail and at such times as the Council may specify;

(4) submit to the Council, by November 1 of each fiscal year, a complete financial statement and report for the preceding fiscal year;

(5) supervise and be responsible for the assessment of all property subject to assessment and special assessments within the corporate limits of the District for taxation, prepare tax maps, and give such notice of taxes and special assessments, as may be required by law;

(6) supervise and be responsible for the levying and collection of all taxes, special assessments, li-

cense fees, and other revenues of the District, as required by law, and receive all moneys receivable by the District from the Federal Government or from any court, agency, or instrumentality of the District;

(7) have custody of all public funds belonging to or under the control of the District, or any agency of the District government, and deposit all funds coming into his hands, in such depositories as may be designated and under such terms and conditions as may be prescribed by act of the Council;

(8) have custody of all investments and invested funds of the District government, or in possession of such government in a fiduciary capacity, and have the safekeeping of all bonds and notes of the District and the receipt and delivery of District bonds and notes for transfer, registration or exchange; and

(9) apportion the total of all appropriations and funds made available during the fiscal year for obligation so as to prevent obligation or expenditure thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such fiscal year, and with respect to all appropriations or funds not limited to a definite period, and all authorizations to create obligations by contract in advance of appropriations, apportion the total of such appropriations or funds or authorizations so as to achieve the most effective and economical use thereof.

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 448, 87 Stat. 801.)

EFFECTIVE DATE

See note under § 47-221.

CROSS REFERENCE

Duties of Mayor, generally, see § 1-162.

§ 47-227. Accounting supervision and control.

The Mayor shall—

(a) prescribe the forms of receipts, vouchers, bills and claims to be used by all the agencies, offices, and instrumentalities of the District government;

(b) examine and approve all contracts, orders, and other documents by which the District government incurs financial obligations, having previously ascertained that money has been appropriated and allotted and will be available when the obligations shall become due and payable;

(c) audit and approve before payment all bills, invoices, payrolls, and other evidences of claims, demands, or charges against the District government and with the advice of the legal officials of the District determine the regularity, legality, and correctness of such claims, demands, or charges; and

(d) perform internal audits of accounts and operations and agency records of the District government, including the examination of any accounts or records of financial transactions, giving due consideration to the effectiveness of accounting systems, internal control, and related administrative practices of the respective agencies.

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 449, 87 Stat. 802.)

EFFECTIVE DATE

See note under § 47-221.

§ 47-228. Budget process—Limitations on borrowing and spending.

(a) Nothing in this Act shall be construed as making any change in existing law, regulation, or basic procedure and practice relating to the respective roles of the Congress, the President, the Federal Office of Management and Budget, and the Comptroller General of the United States in the preparation, review, submission, examination, authorization, and appropriation of the total budget of the District of Columbia government.

(b) (1) No general obligation bonds (other than bonds to refund outstanding indebtedness) or Treasury capital project loans shall be issued during any fiscal year in an amount which would cause the amount of principal and interest required to be paid both serially and into a sinking fund in any fiscal year on the aggregate amounts of all outstanding general obligation bonds and such Treasury loans, to exceed 14 per centum of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year in which the bonds will be issued. Treasury capital project loans include all borrowings from the United States Treasury, except those funds advanced to the District by the Secretary of the Treasury under the provisions of section 47-2501.

(2) Obligations incurred pursuant to the authority contained in subchapter II of chapter 17 of title 2, and obligations incurred by the agencies transferred or established by sections 201 and 202, whether incurred before or after such transfer or establishment, shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in the preceding subsection.

(3) The 14 per centum limitation specified in paragraph (1) shall be calculated in the following manner:

(A) Determine the dollar amount equivalent to 14 percent of the District revenues (less court fees, any fees or revenues directed to servicing revenue bonds, retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year for which the bonds will be issued.

(B) Determine the actual total amount of principal and interest to be paid in each fiscal year for all outstanding general obligation bonds and such Treasury loans.

(C) Determine the amount of principal and interest to be paid during each fiscal year over the term of the proposed general obligation bond or such Treasury loan to be issued.

(D) If in any one fiscal year the sum arrived at by adding subparagraphs (B) and (C) exceeds the amount determined under subparagraph (A), then the proposed general obligation bond or such Treasury loan in subparagraph (C) cannot be issued.

(c) The Council shall not approve any budget which would result in expenditures being made by the District Government, during any fiscal year, in excess of all resources which the Mayor estimates will be available from all funds available to the District for such fiscal year. The budget shall identify any tax increases which shall be required in order to balance the budget as submitted. The Council shall be required to adopt such tax increases to the extent its budget is approved. For the purposes of this section, the Council shall use a Federal payment amount not to exceed the amount authorized by Congress. In determining whether any such budget would result in expenditures so being made in excess of such resources, amounts included in the budget estimates of the District of Columbia courts in excess of the recommendations of the Council shall not be applicable.

(d) The Mayor shall not forward to the President for submission to Congress a budget which is not balanced according to the provision of subsection (c).

(e) Nothing in this Act shall be construed as affecting the applicability to the District government of the provisions of section 3679 of the Revised Statutes of the United States (31 U.S.C. 665), the so-called Anti-Deficiency Act. (Dec. 24, 1973, Pub. L. 93-198, title VI, § 603, 87 Stat. 814.)

REFERENCES IN TEXT

"This Act", referred to in subssecs. (a) and (e), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). "Sections 201 and 202", referred to in subsec. (b) (2), are sections 201 and 202 of such Act. For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-124, 1-125, 1-144, section 445 of title 11 Appendix, 43-1619, 47-222, 47-226, 47-241.

SUBCHAPTER II.—BORROWING

§ 47-241. Authority to issue and redeem general obligation bonds for capital projects.

(a) Subject to the limitations in section 47-228(b), the District may incur indebtedness by issuing general obligation bonds to refund indebtedness of the District at any time outstanding and to provide for the payment of the cost of acquiring or undertaking its various capital projects. Such bonds shall bear interest, payable annually or semi-annually, at such rate and at such maturities as the Mayor, subject to the provisions of section 47-242, may from time to time determine to be necessary to make such bonds marketable.

(b) The District may reserve the right to redeem any or all of its obligations before maturity in such manner and at such price as may be fixed by the Mayor prior to the issuance of such obligations.

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 461, 87 Stat. 804.)

EFFECTIVE DATE

See note under § 47-221.

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this subchapter.

INTERIM LOAN AUTHORITY

Section 723 of title VII of Act Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 821, provided:

"(a) The Mayor is authorized to accept loans for the District from the Treasury of the United States, and the Secretary is authorized to lend to the Mayor, such sums as the Mayor may determine are required to complete capital projects for which construction and construction services funds have been authorized or appropriated, as the case may be, by Congress prior to the effective date of title IV [Jan. 2, 1975]. In addition, such loans may include funds to pay the District's share of the cost of the adopted regional system specified in the National Capital Transportation Act of 1969 [§ 1-1441 et seq.].

"(b) Loans advanced pursuant to this section during any six-month period shall be at a rate of interest determined by the Secretary as of the beginning of such period, which, in his judgment, would reflect the cost of money to the Treasury for borrowing at a maturity approximately equal to the period of time the loan is outstanding.

"(c) Subject to the limitations contained in section 603(b) [§ 47-228(b)], there are authorized to be appropriated such sums as may be necessary to make loans under this section."

REFUNDING BOND AUTHORIZATION

Act Dec. 20, 1975, D.C. Law 1-41, 22 DCR 3307, provided: That this act may be cited as the "Refunding Bond Authorization Act."

Sec. 2. The issuance of general obligation bonds of the District of Columbia in the maximum principal amount of \$50,000,000 (herein called the "Bonds"), is hereby authorized in accordance with the provisions of this act and Title IV of the District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93-198, herein called the "District Charter") for the purpose of refunding the outstanding principal amount of loans made to the General Fund of the District of Columbia from the United States Treasury, as follows:

<i>Date of loan</i>	<i>Outstanding principal Amount to be refunded</i>
March 31, 1975	\$ 6,000,000
May 30, 1975	\$44,000,000

Sec. 3. The following determinations are hereby made:

(a) The maximum rate of interest to be paid on any maturity of the bonds shall be eight per centum (8%) per annum;

(b) The maximum allowable maturity for the Bonds, computed from the date of the Bonds, shall be thirty years; and

(c) The maximum debt service payable in any year on the Bonds shall be \$5,200,000.

Sec. 4. The Bonds shall be executed in the name of the District of Columbia by the facsimile signature of the Mayor and the Chairman of the Council of the District of Columbia and by the manual signature of the Director of the Office of Budget and Management Systems, or in the absence or inability of such Director to act, by the manual signature of a Deputy Director of said office, and shall be sealed with the corporate seal of the District of Columbia or a facsimile thereof, and the coupons appertaining to Bonds issued in bearer coupon form shall bear the facsimile signature of said Mayor and said Chairman.

Sec. 5. The full faith and credit of the District of Columbia are hereby irrevocably pledged for the payment of the principal of and interest on the Bonds as the same become due and payable. A special tax upon all real property subject to taxation in the District of Columbia is hereby authorized and shall be levied annually, without limitation as to rate or amount, in an amount which, together with other revenues of the District of Columbia

available and applicable for said purposes, will be sufficient to pay the principal of and interest on the Bonds and the premium, if any, upon the redemption thereof, as the same respectively become due and payable, which tax shall be levied and collected at the same time and in the same manner as other District taxes are levied and collected, and when collected, shall be set aside, together with such other revenues, in the sinking fund required to be established by the Mayor pursuant to section 481 of the District-Charter [§ 47-251], and irrevocably dedicated to the payment of such principal, interest and premium.

Sec. 6. In accordance with the provisions of section 465 of the District Charter [§ 47-245], the Bonds may be issued in one or more series, but no issue of the Bonds shall be advertised for sale unless the Mayor shall have filed with the Secretary of the Council of the District of Columbia, not less than two days prior to the first publication of the notice of such sale, excluding Saturdays, Sundays and holidays: (i) a copy of his certificate executed pursuant to such section, determining the amount of such issue, the maturities and the other terms and details of such issue, (ii) the form of such notice of sale, and (iii) the form of the official statement or other similar brochure to be distributed in relation to such issued, *Provided*, however, that subsequent to such filing, the Mayor, without any further filing, may make such minor changes, insertions, additions and modifications in such official statement or brochure as he shall deem appropriate.

Sec. 7. The Bonds and the interest thereon shall be payable at such place or places within or without the District of Columbia as the Council of the District of Columbia may by resolution determine.

Sec. 8. The Mayor may issue temporary Bonds pending the printing or engraving and delivery in definitive form of the Bonds after public sale. Such temporary Bonds shall be of substantially the same form and tenor as the definitive Bonds, but with such omissions, insertions, and variations as may be appropriate to temporary Bonds. Such temporary Bonds shall provide that they are exchangeable for definitive Bonds when such definitive Bonds are ready for delivery, and if such definitive Bonds are coupon Bonds, the temporary Bonds need not have coupons attached, but may provide for the payment of interest upon their presentation for notation of such payment thereon. Such temporary Bonds may be issued in such denominations as the purchaser may request.

Sec. 9. The Mayor may contract from time to time for a period or periods not exceeding five years each, with any bank or trust company located within or without the District of Columbia for the purpose of having such bank or trust company act in connection with the Bonds, as the Registrar for the District of Columbia and for related services, and for the payment by the District of reasonable compensation for the services to be performed pursuant to such contract. Any such contract shall provide that it may be terminated by the District of Columbia at any time.

Sec. 10. (a) In case any definitive or temporary Bond shall become mutilated, or be destroyed, lost, or stolen, the Mayor in his discretion may cause to be prepared and executed and delivered a new Bond (with coupons corresponding to the coupons, if any, appertaining to the mutilated, destroyed, lost or stolen Bond) in exchange for the mutilated Bond and its coupons (if any), or in lieu of and substitution for the Bond and its coupons (if any) so destroyed, lost or stolen. In case any coupon or coupons appertaining to any temporary or definitive Bond shall become mutilated or be destroyed, lost, or stolen, the Mayor in his discretion may cause to be prepared and authenticated and delivered a new Bond (with coupons corresponding to the coupons appertaining to such temporary or definitive Bond) in exchange and substitution for such definitive or temporary Bond and any coupons appertaining thereto which shall not be destroyed, lost or stolen and in lieu of and substitution for the coupons appertaining thereto which shall be mutilated, destroyed, lost or stolen. In every case of exchange or substitution, the applicant shall furnish to the District such security or indemnity as may be required by the Mayor to save the District harmless from all risks, however remote, and the applicant shall also

furnish to the District evidence to the satisfaction of the Mayor of the mutilation, destruction, loss or theft of the applicant's Bond (or coupon or coupons) and of the ownership thereof. Upon the issue of any Bond upon such exchange or substitution, the Mayor may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees, of the District. In case any Bond or any coupon which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Mayor may, instead of issuing a Bond in exchange or substitution therefor, authorize the payment of the same (without surrender thereof except in the case of a mutilated Bond or coupon) if the applicant for such payment shall furnish to the District such security or indemnity as the Mayor may require to save the District harmless, and evidence to the satisfaction of the Mayor of the mutilation, destruction, loss or theft of such Bond or coupon and of the ownership thereof.

(b) Every Bond issued pursuant to the provisions of this act in exchange or substitution for any Bond which (or coupon appertaining to which) is destroyed, lost, or stolen, shall constitute an additional contractual obligation of the District, whether or not the destroyed, lost, or stolen Bond or coupon or coupons shall be found at any time, or be enforceable by anyone, and shall be entitled to all benefits equally and proportionately with any and all other Bonds and coupons of the same issue.

Sec. 11. This act shall become law and become effective in accordance with the provisions of sections 404(e) and 602(c) of the District Charter [§§ 1-144(e) and 1-147(c)].

CROSS REFERENCE

District share of costs of Adopted Regional System payable from proceeds of sale of general obligation bonds, see § 1-1443a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-242, 47-245, 47-251.

§ 47-242. Contents of borrowing legislation.

The Council may by act authorize the issuance of general obligation bonds for the purposes specified in section 47-241. Such an act shall contain, at least, provisions—

- (1) briefly describing each project to be financed by the act;
- (2) identifying the Act authorizing each such project;
- (3) setting forth the maximum amount of the principal of the indebtedness which may be incurred for each such project;
- (4) setting forth the maximum rate of interest to be paid on such indebtedness;
- (5) setting forth the maximum allowable maturity for the issue and the maximum debt service payable in any year; and
- (6) setting forth, in the event that the Council determines in its discretion, to submit the question of issuing such bonds to a vote of the qualified voters of the District, the manner of holding such election, the manner of voting for or against the incurring of such indebtedness, and the form of ballot to be used at such election.

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 462, 87 Stat. 804; Aug. 29, 1974, Pub. L. 93-395, § 1(4), 88 Stat. 793.)

AMENDMENTS

1974—Act Aug. 29, 1974, Pub. L. 93-395, amended clause (1) by substituting "project to be financed by the act" for "such project".

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-241, 47-245, 47-251.

§ 47-243. Publication of borrowing legislation.

The Mayor shall publish any act authorizing the issuance of general obligation bonds at least once within five days after the enactment thereof, together with a notice of the enactment thereof in substantially the following form:

"NOTICE

"The following act (published herewith) authorizing the issuance of general obligations bonds, has become effective. The time within which a suit, action, or proceeding questioning the validity of such bonds can be commenced, will expire twenty days from the date of the first publication of this notice, as provided in the District of Columbia Self-Government and Governmental Reorganization Act.

"_____,
"Mayor."

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 463, 87 Stat. 804.)

REFERENCE IN TEXT

The District of Columbia Self-Government and Governmental Reorganization Act, referred to in text, is the Act of Dec. 24, 1973, Pub. L. 93-198. For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-245, 47-251.

§ 47-244. Short period of limitation.

At the end of the twenty-day period beginning on the date of publication of the notice of the enactment of an act authorizing the issuance of general obligation bonds without the submission of the proposition for the issuance thereof to the qualified voters, or upon the expiration of twenty days from the date of publication of the promulgation of the results of an election upon the proposition of issuing bonds, as the case may be—

(1) any recitals or statements of fact contained in such act or in the preambles or the titles thereof or in the results of the election of any proceedings in connection with the calling, holding, or conducting of election upon the issuance of such bonds shall be deemed to be true for the purpose of determining the validity of the bonds thereby authorized, and the District and all others interested shall thereafter be estopped from denying same;

(2) such act and all proceedings in connection with the authorization of the issuance of such bonds shall be conclusively presumed to have been duly and regularly taken, passed, and done by the District and the Board of Elections and Ethics in full compliance with the provisions of this Act and of all laws applicable thereto; and

(3) the validity of such act and said proceedings shall not thereafter be questioned by either a party plaintiff or a party defendant, and no court shall have jurisdiction in any suit, action, or proceeding

questioning the validity of same, except in a suit, action, or proceeding commenced prior to the expiration of such twenty-day period.

(Dec. 24, 1973, Pub. L. 93-198, title IV, § 464, 87 Stat. 805; Aug. 14, 1974, Pub. L. 93-376, title III, § 306(a), 88 Stat. 458.)

REFERENCE IN TEXT

"This Act", referred to in par. (2), is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973, (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

AMENDMENTS

1974—Act Aug. 14, 1974, Pub. L. 93-376, amended par. (2), by substituting "Board of Elections and Ethics" for "Board of Elections".

EFFECTIVE DATE

See note under § 47-221.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment effective on and after Aug. 14, 1974, see section 306(a) of Act Aug. 14, 1974, Pub. L. 93-376, set out as § 1-1156(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-245, 47-251.

§ 47-245. Acts for issuance of general obligation bonds.

At the end of the twenty-day period specified in section 47-244, the Mayor may issue general obligation bonds as authorized pursuant to the provisions of sections 47-241 to 47-245. An issue of general obligation bonds is hereby defined to be all or any part of an aggregate principal amount of bonds authorized pursuant to such sections, but no indebtedness shall be deemed to have been incurred within the meaning of this Act until such bonds have been sold, delivered, and paid for, and then only to the extent of the principal amount of such bonds so sold and delivered. The bonds of each issue shall be payable in annual installments beginning not more than three years after the date of such bonds and ending not more than thirty years from such date. The amount of said issues to be payable in each year shall be so fixed that when the annual interest is added to the principal amount payable in each year, the total amount payable either serially or to a sinking fund shall be substantially equal. It shall be an immaterial variance if the difference between the largest and smallest amounts of principal and interest so payable during each fiscal year during the term of the general obligation bonds does not exceed 3 per centum of the total authorized amount of such series. Such bonds and coupons may be executed by the facsimile signatures of the officer designated by the act authorizing such bonds, to sign the bonds, within the exception that at least one signature shall be manual. Such bonds may be issued in coupon form in the denomination of \$1,000, or \$1,000 and \$5,000, registerable as to principal only or as to both principal and interest, and if registered as to both principal and interest may be issuable in denominations of multiples of \$1,000. Such bonds and the interest thereon may be payable at such place or places within or without the District as the Council may determine. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 465, 87 Stat. 805; Aug. 29, 1974, Pub. L. 93-395, § 1(5), 88 Stat. 793.)

REFERENCE IN TEXT

"This Act", referred to in text, is the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 87 Stat. 774). For classification of the Act to the Code, see the Parallel Reference Tables.

AMENDMENT

1974—Act Aug. 29, 1974, Pub. L. 93-395, amended the first sentence by substituting "Mayor may issue" for "Council may by act establish an issue of", and by deleting "inclusive, hereof" at the end thereof.

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-251.

§ 47-246. Public sale.

All general obligation bonds issued under this part shall be sold at public sale upon sealed proposals after publication of a notice of such sale at least once not less than ten days prior to the date fixed for sale in a daily newspaper carrying municipal bond notices and devoted primarily to financial news or to the subject of State and municipal bonds published in the city of New York, New York, and in one or more newspapers of general circulation published in the District. Such notice shall state, among other things, that no proposal shall be considered unless there is deposited with the District as a downpayment a certified check or cashier's check for an amount equal to at least 2 per centum of the par amount of general obligation bonds bid for, and the Mayor shall reserve the right to reject any and all bids. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 466, 87 Stat. 806; Aug. 29, 1974, Pub. L. 93-395, § 1(6), 88 Stat. 793.)

REFERENCE IN TEXT

"This part", referred to in text, refers to Part E (comprising sections 461 to 490) of title IV of Act of Dec. 24, 1973, Pub. L. 93-198. For classification of the Act to the Code, see the Parallel Reference Tables.

AMENDMENT

1974—Act Aug. 29, 1974, Pub. L. 93-395, amended the second sentence by substituting "Mayor" for "Council".

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-251.

§ 47-247. Borrowing to meet obligations.

In the absence of unappropriated available revenues to meet appropriations made pursuant to section 47-224, the Council may by act authorize the issuance of negotiable notes, in a total amount not to exceed 2 per centum of the total appropriations for the current fiscal year, each of which may be renewed from time to time, but all such notes and renewals thereof shall be paid not later than the close of the fiscal year following that in which such act becomes effective. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 471, 87 Stat. 806.)

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-251.

§ 47-248. Borrowing in anticipation of revenues.

For any fiscal year, in anticipation of the collection or receipt of revenues of that fiscal year, the

Council may by act authorize the borrowing of money by the execution of negotiable notes of the District, not to exceed in the aggregate at any time outstanding 20 per centum of the total anticipated revenue, each of which shall be designated "Revenue Note for the Fiscal Year 19__". Such notes may be renewed from time to time, but all such notes, together with the renewals, shall mature and be paid not later than the end of the fiscal year for which the original notes have been issued. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 472, 87 Stat. 806.)

EFFECTIVE DATE

See note under § 47-221.

CROSS REFERENCE

Taxes not to be anticipated by sale or hypothecation, see § 1-219.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-251.

§ 47-249. Notes redeemable prior to maturity.

No notes issued pursuant to this part shall be made payable on demand, but any note may be made subject to redemption prior to maturity on such notice and at such time as may be stated in the note. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 473, 87 Stat. 806.)

REFERENCE IN TEXT

"This part", referred to in text, refers to Part E (comprising sections 461 to 490) of title IV of Act of Dec. 24, 1973, Pub. L. 93-198. For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-251.

§ 47-250. Sale of notes.

All notes issued pursuant to this part may be sold at not less than par and accrued interest at private sale without previous advertising. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 474, 87 Stat. 806.)

REFERENCE IN TEXT

"This part", referred to in text, refers to Part E (comprising sections 461 to 490) of title IV of Act of Dec. 24, 1973, Pub. L. 93-198. For classification of the Act to the Code, see the Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-251.

§ 47-251. Payment of bonds and notes—Special tax.

(a) The act of the Council authorizing the issuance of general obligation bonds pursuant to this title, shall, where necessary, provide for the levy annually of a special tax or charge without limitation as to rate or amount in amounts which, together with other revenues of the District available and applicable for said purposes, will be sufficient to pay the principal of and interest on such bonds and the premium, if any, upon the redemption thereof, as the same respectively become due and payable, which tax shall be levied and collected at the same time and in the same manner as other District taxes are levied and collected, and when collected shall be set aside in a sinking fund and irrevocably dedicated to the payment of such principal, interest, and premium.

(b) The full faith and credit of the District shall be and is hereby pledged for the payment of the principal of and the interest on all general obligation bonds and notes of the District hereafter issued pursuant to sections 47-241 to 47-251 whether or not such pledge be stated in such bonds or notes or in the act authorizing the issuance thereof.

(c) (1) As soon as practicable following the beginning of each fiscal year, the Mayor shall review the amounts of District revenues which have been set aside and deposited in a sinking fund as provided in subsection (a). Such review shall be carried out with a view to determining whether the amounts so set aside and deposited are sufficient to pay the principal of and interest on general obligation bonds issued pursuant to this title, and the premium (if any) upon the redemption thereof, as the same respectively become due and payable. To the extent that the Mayor determines that sufficient District revenues have not been so set aside and deposited, the Federal payment made for the fiscal year within which such review is conducted shall be first utilized to make up any deficit in such sinking fund.

(2) The Comptroller General of the United States shall make annual audits of the amounts set aside and deposited in the sinking fund. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 481, 87 Stat. 807.)

REFERENCE IN TEXT

"This title", referred to in subsecs. (a) and (c) (1), is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

§ 47-252. Tax exemption.

Bonds and notes issued by the Council pursuant to this title and the interest thereon shall be exempt from all Federal and District taxation except estate, inheritance, and gift taxes. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 485, 87 Stat. 807.)

REFERENCE IN TEXT

"This title", referred to in text, is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

§ 47-253. Legal investment.

Notwithstanding any restriction on the investment of funds by fiduciaries contained in any other law, all domestic insurance companies, domestic insurance associations, executors, administrators, guardians, trustees, and other fiduciaries within the District may legally invest any sinking funds, moneys, trust funds, or other funds belonging to them or under or within their control in any bonds issued pursuant to this title, it being the purpose of this section to authorize the investment in such bonds or notes of all sinking, insurance, retirement, compensation, pension, and trust funds. National banking associations are authorized to deal in, underwrite, purchase and sell, for their own accounts or

for the accounts of customers, bonds and notes issued by the Council to the same extent as national banking associations are authorized by paragraph seven of section 5136 of the Revised Statutes (12 U.S.C. 24), to deal in, underwrite, purchase and sell obligations of the United States, States, or political subdivisions thereof. All Federal building and loan associations and Federal savings and loan associations; and banks, trust companies, building and loan associations, and savings and loan associations, domiciled in the District, may purchase, sell, underwrite, and deal in, for their own account or for the account of others, all bonds or notes issued pursuant to this title. Nothing contained in this section shall be construed as relieving any person, firm, association, or corporation from any duty of exercising due and reasonable care in selecting securities for purchase or investment. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 486, 87 Stat. 807.)

REFERENCE IN TEXT

"This title", referred to in text, is title IV (consisting of sections 401 to 495) of the District of Columbia Self-Government and Governmental Reorganization Act, approved Dec. 24, 1973 (Pub. L. 93-198, 88 Stat. 785-811). For classification of title IV to the Code, see Parallel Reference Tables.

EFFECTIVE DATE

See note under § 47-221.

§ 47-254. Revenue bonds and other obligations.

(a) The Council may by act issue revenue bonds, notes, or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance or assist in the financing of undertakings in the areas of housing, health facilities, transit and utility facilities, recreational facilities, college and university facilities, and industrial and commercial development. Such bonds, notes, or other obligations shall be fully negotiable and payable, as to both principal and interest, solely from and secured solely by a pledge of the revenues realized from the property, facilities, developments, and improvements whose financing is undertaken by the issuance of such bonds, notes, or other obligations, including existing facilities to which such new facilities and improvements are related, which financing may be effected through loans made directly or indirectly (including the purchase of mortgages, in those cases described in subsection (b) of this section, notes, or other securities) to any public, quasi-public, or private corporation, partnership, association, person, or other legal entity.

(b) Except in the case of housing, recreation, commercial and industrial development, the property, facilities, developments, and improvements being financed may not be mortgaged as additional security for bonds, notes, or other obligations, but in no event shall any property owned by the District of Columbia or the United States be mortgaged for the purpose of this section.

(c) Any and all such bonds, notes, or other obligations shall not be general obligations of the District and shall not be a pledge of or involve the faith and credit or the taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as contained in section 1-147(a) (2).

(d) Any and all such bonds, notes, or other obligations shall be issued pursuant to an act of the Council without the necessity of submitting the question of such issuance to the registered qualified electors of the District for approval or disapproval.

(e) Any such act may contain provisions—

(1) briefly describing the purpose for which such bond, note, or other obligation is to be issued;

(2) identifying the Act authorizing such purpose;

(3) prescribing the form, terms, provisions, manner or method of issuing and selling (including negotiated as well as competitive bid sale), and the time of issuance, of such bonds, notes, or other obligations; and

(4) prescribing any and all other details with respect to any such bonds, notes, or other obligations and the issuance and sale thereof.

The act may authorize and empower the Mayor to do any and all things necessary, proper, or expedient in connection with the issuance and sale of such notes, bonds, or other obligations authorized to be issued under the provisions of this section. (Dec. 24, 1973, Pub. L. 93-198, title IV, § 490, 87 Stat. 809.)

EFFECTIVE DATE

See note under § 47-221.

Chapter 3.—COLLECTION AND DISBURSEMENT OF TAXES

Sec.

47-301. Repealed.

§ 47-301. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(b), 88 Stat. 1065; Jan. 3, 1975, Pub. L. 93-635, § 8(c), 88 Stat. 2177.

Section, Act Mar. 3, 1881, ch. 134, § 1, 21 Stat. 460, provided that the collector of tax shall collect all revenues of the District and deposit same with the U.S. Treasurer, and is now covered in part by § 47-631.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§ 47-302. Collector of taxes—Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-303. Deputy collector of taxes—Duties—Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-305. Account books to be kept by collector.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-307. Waiver of interest and penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-308. Collector may omit uncollectible taxes from record of assets.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-309. Disbursement of taxes and appropriations—Vouchers—Settlement of accounts.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-310. Requisition by Commissioner—Appropriations not to be exceeded—Accounting.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-311. "Miscellaneous Trust Fund Deposits"—Advances—Audit—Separate accounts to be kept.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-312. Collection of taxes by distraint—Acquisition of liens.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45-735, 47-1567g.

§ 47-314. Abatement of taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 4.—DESIGNATION OF PROPERTY FOR ASSESSMENT AND TAXATION

§ 47-401. Squares, lots, blocks, parcels, to be numbered.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-403. Daily transcript from records of recorder of deeds and register of wills.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-405. Designation of land to be numbered.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-406. Designation of land—Plat books to be made under authority of Commissioner—Custody of surveyor.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-407. Surveyor's office to make daily transcripts of records of deeds, wills, condemnations, and decrees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 5.—RATES, RECORDS, AND SURPLUS FUNDS

Sec.

47-501a. Repealed.

47-504. Delegation of general taxing authority to Council.

§ 47-501. Assessment of taxes on real and personal property—Rate of taxation—Collection.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Tax on real property, see § 47-631 et seq.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-631.

§ 47-501a. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(a), 88 Stat. 1065.

Section, Act May 18, 1954, ch. 218, title XV, § 1501, 68 Stat. 119, provided a minimum rate of taxation on real property. For current provisions, see § 47-631 et seq.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§ 47-503. Disposition of surplus funds—To be applied to succeeding year's expenditures.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-504. Delegation of general taxing authority to Council.

In order to provide for additional revenue to meet additional expenditures resulting from a compensation increase adopted for persons paid under the District of Columbia Teachers' Salary Act of 1955 (chapter 15 of title 31), policemen, and firemen, the Council, in accordance with section 406 of Reorganization Plan Numbered 3 of 1967, is authorized to change the rate of the taxes imposed under—

(1) the District of Columbia Income and Franchise Tax Act of 1947 (subchapter II of chapter 15 of this title),

(2) the District of Columbia Sales Tax Act (chapter 26 of this title),

(3) The District of Columbia Use Tax Act (chapter 27 of this title),

(4) the District of Columbia Cigarette Tax Act (chapter 28 of this title),

(5) the District of Columbia Alcoholic Beverage Control Act (chapter 1 of title 25),

(6) the Act of April 23, 1924 (relating to motor vehicle fuel tax) (chapter 19 of this title),

(7) title V of the District of Columbia Revenue Act of 1937 (chapter 16 of this title), and

(8) any other Act of Congress imposing a tax solely in the District of Columbia.

(Sept. 3, 1974, Pub. L. 93-407, title IV, § 471, 88 Stat. 1064.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

Reorganization Plan Numbered 3 of 1967, referred to in the text, is set out in the Appendix to title 1, Administration, in the main edition.

CODIFICATION

Section was enacted by title IV of Act Sept. 3, 1974, Pub. L. 93-407, and is therefore subject to the definitions and regulations provisions of such title IV, as set out in §§ 47-622 and 47-661.

EFFECTIVE DATE

Section 472 of Act Sept. 3, 1974, Pub. L. 93-407, provided: "Section 461 [enacting § 47-504] shall take effect on the date of enactment of this Act."

CROSS REFERENCE

Council authorized to establish real property tax rate, see § 47-632.

Chapter 6.—TAX ASSESSOR

Sec.

47-602 to 47-605. Repealed.

§ 47-601. Assessor of District of Columbia to prepare annual tax ledgers—Statement of assessment and taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-602. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(c), 88 Stat. 1065.

Section, Act July 7, 1898, ch. 571, § 1, 30 Stat. 666, required the assessor of the District to furnish bond.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§ 47-603. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(d), 88 Stat. 1065.

Section, Act June 25, 1938, ch. 702, § 11, 52 Stat. 1202, related to records to be kept by the District assessor, and his duties.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§ 47-604. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(f), 88 Stat. 1065.

Section, Acts Aug. 14, 1894, 28 Stat. 282, ch. 287, § 2; July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; Mar. 3, 1917, 39 Stat. 1005, ch. 160; July 3, 1926, 44 Stat. 832, ch. 759, § 1; Aug. 3, 1954, 68 Stat. 651, ch. 654, § 1, related to the appointment and qualifications of a permanent board of assistant assessors and the clerk thereof.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§ 47-605. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(e), 88 Stat. 1065.

Section, Acts July 1, 1902, 32 Stat. 617, ch. 1352, § 6, par. 1; July 3, 1926, 44 Stat. 832, ch. 759, § 1, provided for designation of three of the members of the Board of Assistant Assessors to assess personal property.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§ 47-606. Assessor to have power to administer oaths and summon witnesses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Composition and functions of Board of Equalization and Review, see § 47-646.

Penalty for violations, see § 47-649.

Similar provisions, see § 47-647.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-649.

Chapter 6A.—REAL PROPERTY TAX

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.

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47-622. Definitions.

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47-657. Tax delinquent property to be deeded to District—Redemption.

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SUBCHAPTER III.—MISCELLANEOUS

47-661. Regulations—Penalties.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 47-621. Declaration of purpose.

It is the intent of Congress to revise the real property tax in the District of Columbia to achieve the following objectives:

- (1) Equitable sharing of the financial burden of the government of the District of Columbia.
- (2) Full public information regarding assessments and appeal procedures.
- (3) Promotion of economic activity, diversity of land use, and preservation of the character of the District of Columbia.
- (4) Assurance that shifts in the tax burden on individual taxpayers will not be excessive.
- (5) Comparability of tax effort between the District of Columbia and surrounding jurisdictions in the metropolitan area and cities of comparable size.

(Sept. 3, 1974, Pub. L. 93-407, title IV, § 402, 88 Stat. 1051.)

EFFECTIVE DATE

Section 478 of Act Sept. 3, 1974, Pub. L. 93-407, title IV, 88 Stat. 1065, provided: "Except as specifically provided in this title [for classifications of title IV, consisting of secs. 401 to 478, see Tables], the provisions of this title shall take effect on the date of enactment of this title, except that Part 1 [§§ 47-621, 47-622] and subparts A through G of Part 2 [§§ 47-631 to 47-658] shall apply beginning with the fiscal year beginning July 1, 1975."

SHORT TITLE

Section 401 of Act Sept. 3, 1974, Pub. L. 93-407, title IV, provided: "This title [enacting this chapter, sections 47-504, 47-801-1, and 47-1567g, and provisions set out in notes under this section and sections 47-504 and 47-632; amending sections 47-801a, 47-2405, and 47-2601; and repealing sections 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, and 47-713] may be cited as the 'District of Columbia Real Property Tax Revision Act of 1974.'"

POWERS OF COMMISSIONER AND COUNCIL; DELEGATION OF FUNCTIONS

Section 475 of Act Sept. 3, 1974, Pub. L. 93-407, title IV, 88 Stat. 1065, provided: "Except as specifically provided in this title, nothing in this title [for classifications of title IV, consisting of secs. 401 to 478, see Tables] or any amendments made by this Act, shall be construed so as to affect the authority vested in the Commissioner of the District of Columbia or the authority vested in the District of Columbia Council by Reorganization Plan Numbered 3 of 1967. The performance of any function vested by this title in the Commissioner of the District of Columbia or in any office or agency under his jurisdiction and control, or in the District of Columbia Council, may be delegated by the Commissioner or by the Council, as the case may be, in accordance with the provisions of such plan."

Section 501 of Act Sept. 3, 1974, Pub. L. 93-407, title V, 88 Stat. 1066, provided: "notwithstanding any other provision of law, or any rule of law, nothing in this Act [for classification of Act to the Code, see Tables] shall be construed as limiting the authority of the Council of the District of Columbia to enact any act, resolution, or regulation, after January 2, 1975, pursuant to the District of Columbia Self-Government and Governmental Reorganization Act with respect to any matter covered by this Act."

SAVINGS PROVISIONS

Section 476 of Act Sept. 3, 1974, Pub. L. 93-407, title IV, 88 Stat. 1065, provided: "(a) The repeal or amendment by this title [for classifications of title IV, consisting of secs. 401 to 478, see Tables] of any provision of law shall not affect any act done or any right accrued or accruing under such provision of law before the effective date of this title or any suit or proceeding had or commenced before the effective date of this title, but all such rights

and liabilities under such law shall continue, and may be enforced in the same manner and to the same extent, as if such repeal or amendment had not been made.

"(b) All offenses committed, and all penalties incurred, prior to the effective date of this title, under any provision of law hereby repealed or amended, may be prosecuted and punished in the same manner and with the same effect as if this title had not been enacted."

§ 47-622. Definitions.

For the purposes of this chapter—

(1) The term "real property" means real estate identified by plat on the records of the District of Columbia Surveyor according to lot and square together with improvements thereon.

(2) The term "Commissioner" means the Commissioner of the District of Columbia established under Reorganization Plan Numbered 3 of 1967.

(3) The term "Council" means the District of Columbia Council established under Reorganization Plan Numbered 3 of 1967.

(4) The term "estimated market value" means 100 per centum of the most probable price at which a particular piece of real property, if exposed for sale in the open market with a reasonable time for the seller to find a purchaser, would be expected to transfer under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other.

(5) The term "regulation", unless specifically identified as a regulation of the Commissioner, means a regulation of the Council enacted under section 406 of the Reorganization Plan Numbered 3 of 1967, and after January 2, 1975, such term means an act of the Council of the District of Columbia enacted under section 412 [D.C. Code § 1-146] (and related sections) of the District of Columbia Self-Government and Governmental Reorganization Act.

(6) The term "tax year" means—

(A) with respect to a real property tax rate proposed by the Mayor or established by the Council after January 1 but before June 30 of any calendar year, the next following fiscal year; and

(B) with respect to a real property tax rate proposed by the Mayor or established by the Council after June 30 in any calendar year, the fiscal year during which the rate was proposed or established.

(Sept. 3, 1974, Pub. L. 93-407, title IV, § 403, 88 Stat. 1051.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCES IN TEXT

"This chapter", referred to in text, in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713.

Reorganization Plan Numbered 3 of 1967, referred to in pars. (2), (3), and (5), is set out in the Appendix to title 1, Administration, in the main edition.

The District of Columbia Self-Government and Governmental Reorganization Act, referred to in par. (5), is the Act of Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 774. For classification of the Act to the Code, see the Parallel Reference Tables.

SUBCHAPTER II.—AUTHORITY AND PROCEDURE TO ESTABLISH REAL PROPERTY TAX RATES

SUBPART A.—REAL PROPERTY TAX RATE

§ 47-631. Tax on real property.

Notwithstanding the provisions of section 47-501, there is hereby levied for each fiscal year a tax on the real property in the District of Columbia at a rate determined according to the provisions of this chapter. Unless otherwise provided by law, all revenues received from such tax shall be deposited, from time to time, in the Treasury of the United States, to the credit of the District of Columbia. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 411, 88 Stat. 1052.)

REFERENCE IN TEXT

"This chapter", referred to in text, in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713.

EFFECTIVE DATE

See note under § 47-621.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-633.

§ 47-632. Council to establish tax rate—Public hearings.

The Council, after public hearing, shall establish each year, within thirty days after receipt of the Commissioner's recommendation under section 47-633, a rate of taxation which, except as provided in section 47-651, shall be applied, during the tax year, to the assessed value of all real property subject to taxation. The Council may by resolution extend the time for any year for setting such rate of taxation, except that if the Council does make such an extension, it must establish such a rate for that tax year. If the Council fails to establish such a rate within such thirty days, and fails to extend the time for establishing such a rate, the rate calculated by the Commissioner, pursuant to section 47-633, shall be the rate for that tax year. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 412, 88 Stat. 1052.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

PROPERTY TAX RATE FOR FISCAL YEAR 1975

Section 461 of Act Sept. 3, 1974, Pub. L. 93-407, 88 Stat. 1064, provided: "Notwithstanding any other provision of law the property tax rate for the District of Columbia for fiscal year 1975 shall be set by the Council at such an amount to yield at least \$146 million in fiscal year 1975; except that such amount may be reduced by any amount raised by the Council pursuant to delegation of authority contained in section 471 of this Act [§ 47-504], or by any revenue obtained pursuant to any other provision of law,

or by any amount raised by reprogramming or reallocation of the fiscal year 1975 budget."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-633.

§ 47-633. Commissioner to recommend tax rate to Council.

(a) (1) Except as provided in paragraph (2), by July 15 of each year, the Commissioner shall calculate and submit to the Council a proposed real property tax rate for the tax year, and inform the Council of his certification of the assessment roll pursuant to section 47-646(g). The Commissioner may extend the period for submitting such recommendation.

(2) With respect to the real property tax rate for the fiscal year ending June 30, 1975, the Commissioner shall submit his recommendation to the Council within 30 days after September 3, 1974.

(b) At the time the Commissioner submits to the Council the proposed real property tax rate under subsection (a), he shall also submit the following:

(1) The total aggregate assessed value of taxable real property for the year preceding the tax year by major class or type of property.

(2) The estimated total aggregate assessed value of taxable real property for the tax year for which the property tax rate recommendation is being made, by major class or type of property, indicating separately for each class or type the estimated value attributable to new construction.

(3) The real property tax rate (rounded to the nearest penny) calculated to yield in the tax year the same amount of revenue (exclusive of the revenue attributable to new construction) as was raised by that tax at the rate applicable during the year preceding the tax year.

(c) The real property tax rate submitted by the Commissioner pursuant to subsection (b) (3) shall become the real property tax rate applicable during the tax year for which it is submitted unless the Council acts to set a different such rate pursuant to section 47-632.

(d) On or before February 1 of each year the Commissioner shall estimate as closely as possible the rate to be calculated in subsection (b) (3) and shall so inform the Council.

(e) The real property tax rate applicable in the District for the fiscal year ending June 30, 1975, calculated according to the provisions of sections 47-631, 47-632, and 47-633, and section 461, shall be applied to the assessment roll for 1975 determined according to provisions of law in effect prior to the effective date of this chapter. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 413, 88 Stat. 1052; Jan. 3, 1975, Pub. L. 93-635, § 6(a) (1), (b), 88 Stat. 2176.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCES IN TEXT

"Section 461," referred to in subsec. (e), refers to section 461 of act Sept. 3, 1974, Pub. L. 93-407, which is set out as a note under § 47-632.

"This chapter", referred to in subsec. (e), in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713. For the effective date, see note set out under § 47-621.

CODIFICATION

In subsec. (a) (2), "September 3, 1973" was substituted for "the date of enactment of this title."

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended subsecs. (c) and (d) by striking out "subsection (a)" and inserting in lieu thereof "subsection (b) (3)"; and amended subsec. (e) by striking out "Act" and inserting in lieu thereof "chapter".

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 6(a) (2) of Act Jan. 3, 1975, Pub. L. 93-635, provided: "The amendments [to subsecs. (c) and (d) of § 47-633] made by paragraph (1) shall take effect January 2, 1975."

Section 6(h) of such Act provided: "The amendments [to §§ 47-633(e), 47-641(a), (f), 47-642(b), 47-646(f), (1)] made by subsections (b), (c), (d), (e), (f), and (g) shall take effect as provided in section 478 of that Act [District of Columbia Real Property Tax Revision Act of 1974] as if the sections (as amended) amended by such subsections had been included in Public Law 93-407 on the date of its enactment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-632, 47-634.

§ 47-634. Commissioner to submit information concerning tax exempt real property.

At the time the Commissioner submits to the Council the proposed real property tax rate under section 47-633, he shall also submit the following:

(1) The total aggregate assessed value of real property exempt from the real property tax levied in the District for the current fiscal year by major class or type of exempt status and the tax that would have been paid during such fiscal year had such property not been exempt.

(2) The estimated total aggregate assessed value of real property exempt from the real property tax levied in the District by major class or type of exempt status and the tax that would be paid during the fiscal year under the real property tax rate proposed by the Commissioner pursuant to section 47-633.

(Sept. 3, 1974, Pub. L. 93-407, title IV, § 414, 88 Stat. 1053.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-635. Comparison of tax rates and burdens.

In establishing a real property tax rate the Council shall make a comparison of tax rates and burdens applicable to residential and nonresidential property in the District with those such rates applicable to such property in jurisdictions in the vicinity of the District. The comparison shall include other major taxes in addition to the tax on real property. Without in any way limiting the authority of the Council, it is the intention of Congress, that tax burdens

in the District be reasonably comparable to those in the surrounding jurisdictions of the Washington metropolitan area. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 415, 88 Stat. 1053.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-636. Publication of tax comparisons.

The Commissioner shall, by June 30 of each year, compile and publish information regarding the relative amount of tax for all major taxes in the District compared with those in surrounding jurisdictions in the Washington metropolitan area and with those in other cities. The information shall include the rate of the property tax levied on residential and non-residential property, and the effect of major taxes levied on families of different income levels and on businesses. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 416, 88 Stat. 1053.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

SUBPART B.—ASSESSMENT AND ADMINISTRATION

§ 47-641. Assessment of real property—Regulations.

(a) The assessed value of all real property shall be listed on the assessment roll for real property taxation purposes annually as provided in this subpart. The assessed value for all real property shall be the estimated market value of such property as of January 1 of the year preceding the tax year, as determined by the Commissioner. In determining estimated market value for various kinds of real property the Commissioner shall take into account any factor which might have a bearing on the market value of the real property including, but not limited to, sales information on similar types of real property, mortgage, or other financial considerations, reproduction cost less accrued depreciation because of age, condition, and other factors, income earning potential (if any), zoning, and government-imposed restrictions. Assessments shall be based upon the sources of information available to the Commissioner which may include actual view.

(b) All real property shall be assessed no less frequently than once every two years, and as soon as practicable such assessment shall be made annually. The Council may authorize and direct assessments to be made annually for some or all classes of real property, except that for fiscal year 1978, and for

each fiscal year thereafter, all real property shall be assessed on an annual basis.

(c) The Council may adopt regulations concerning the assessment and reassessment of real property and matters relating thereto which shall be consistent with the provisions of this chapter and other applicable provisions of law.

(d) The Council may adopt regulations regarding information to be furnished the Commissioner by owners of real property. Such regulations shall provide, under penalty of law, that all such information with respect to income derived from investment on income-producing real property shall be handled in the same confidential manner as income tax returns and supporting data required to be submitted to the government of the District of Columbia under laws applicable in the District.

(e) The Commissioner shall submit to the Council, within forty-five days after September 3, 1974, proposed regulations to be adopted by the Council pursuant to subsection (c).

(f) Consistent with the provisions of this chapter and regulations of the Council, the Commissioner shall promulgate necessary regulations and administrative orders. If the Council shall not have adopted regulations concerning assessment pursuant to subsection (c) within ninety days after September 3, 1974, the Commissioner shall promulgate such regulations. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 421, 88 Stat. 1053; Jan. 3, 1975, Pub. L. 93-635, § 6(c), (d), 88 Stat. 2176.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

"This chapter", referred to in subsecs. (c) and (f), in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713.

CODIFICATION

In subsecs. (e) and (f), "September 3, 1974" was substituted for "the date of enactment of this title".

AMENDMENT

1975—Act, Jan. 3, 1975, Pub. L. 93-635, amended the first sentence of subsec. (a) by striking out "this subchapter" and inserting in lieu thereof "this subpart"; and amended the first sentence of subsec. (f) by striking out "Act" and inserting in lieu thereof "chapter".

EFFECTIVE DATE

See note under § 47-621.

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 47-633.

NOTES TO DECISIONS UNDER PRIOR LAW

Parties in court suit

Where class of taxpayers sought to be represented by purported intervenors in suit brought on behalf of city commercial property owners seeking declaratory judgment that practice of assessing commercial property at higher percentage of market value than residential property violated former section 47-713 and the Fifth Amendment had economic interest in outcome of suit, and District of Columbia, which had agreed to set up single

level of assessment and had not denied that its dual assessments violated that section and Fifth Amendment principles of equal protection, did not adequately represent such taxpayers, proposed intervenors should be allowed to intervene under Superior Court rule on behalf of all taxpayers other than commercial ones. *Calvin-Humphrey et al. v. District of Columbia et al.* (D.C. App. 1975, 340 A.2d 795).

§ 47-642. Separate valuation of land and improvements—Appointment of assessors.

(a) The Commissioner shall assess all real property, identifying separately the value of land and improvements thereon, and administer and collect the real property tax within the District. The Commissioner shall also notify owners of real property of assessments and of appeal procedures. In addition, he shall maintain adequate records relating to the administration of the real property tax in the District, and provide appropriate public information concerning such tax.

(b) The Commissioner shall appoint assessors competent to determine values of real property to carry out the provisions of this subpart and other relevant portions of this chapter. Each person so appointed shall take and subscribe an oath to diligently, faithfully, and impartially assess all real property according to applicable law and regulations and otherwise perform the duties of office.

(c) The Commissioner shall assure that information regarding the characteristics of real property, sales and exchanges of all such property, building permits, land use plans, and any other information pertinent to the assessment process shall be made available to the assessors on a timely basis. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 422, 88 Stat. 1054; Jan. 3, 1975, Pub. L. 93-635, § 6(e), 88 Stat. 2176.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

"This chapter", referred to in subsec. (b), in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713.

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended the first sentence of subsec. (b) by striking out "this chapter" the first place it appears and inserting in lieu thereof "this subpart".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 47-633.

§ 47-643. Assessments to be made in name of owner and by address and lot and square.

(a) All real property, except as hereinafter provided, shall be assessed in the name of the owner, or trustee or trustees of the owner thereof. All undivided real property of a deceased person may be assessed in the name of such deceased person until such undivided real property is divided according to law, or has otherwise passed into the possession of some other person; and all real property, the ownership

of which is unknown, shall be assessed as owner unknown.

(b) All real property, whether taxable or not, shall be assessed according to the address and the number of the squares and lots thereof, or part of lots, and upon the number of the square or superficial feet in each square or lot or part of a lot. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 423, 88 Stat. 1054.)

§ 47-644. Preliminary assessment roll—Public inspection of records—Publication of assessment-sales ratio studies and assessed property values.

(a) The Commissioner shall, on or before March 1 of each year, compile in tabular form and place in a book, known as the preliminary assessment roll, the name of the owner, address, lot and square, amount, description, and value, as of January 1 of that year, of the land and improvements of all real property whether such property is taxable or exempt.

(b) The preliminary assessment roll, together with all maps, field books, assessment-sales ratio studies, surveys, and plats, shall be open to public inspection during normal business hours. In addition, any notes and memorandums relating to the assessment of his real property, or a statement clearly indicating the basis upon which his real property has been assessed, shall be open to inspection by the taxpayer or his designated representative during normal business hours. Provision shall be made to furnish copies of all material to any person, upon request, at the lowest charge which covers cost of making such copies.

(c) The Commissioner shall undertake, publish, and otherwise publicize the results of assessment-sales ratio studies for different types of real property for the entire District and for different types of real property within each of the districts utilized in making assessments. If, for a given year, adequate sales data are lacking for particular studies, the Commissioner shall so indicate.

(d) The Commissioner shall, either himself or in a newspaper of general circulation, publish a listing of the assessed value of each property by address, lot, and square, and he shall also make such listing available at the main public library in the District and at such other points as he may determine. Such publication can be by neighborhood areas so long as maps showing the assessment areas are generally available. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 424, 88 Stat. 1054.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-645, 47-646.

§ 47-645. Annual notice or statement of assessment—Contents.

Beginning as soon as possible after January 1, but no later than March 1 of each year, each taxpayer shall be notified of the assessment of his real property for the next fiscal year. The notice, or statement accompanying the notice, shall include—

(1) the address, lot, square, and type of land use by major category of the property;

(2) the assessed value of the land and improvements (shown separately and in total) of the property for the next fiscal year and such amounts for the previous fiscal year;

(3) the amount and percentage of change in assessed value over the previous fiscal year;

(4) an indication of the reason for such change in assessment, such as, but not limited to, improvements to the property, zoning change, changing market values;

(5) statement of appeal procedures pursuant to section 47-646(i);

(6) the citation to the regulations or orders under which the property was assessed;

(7) the location of the assessment roll, studies, and notes referred to in sections 47-644 and 47-646(g) and the hours during which the information is available;

(8) the availability of a listing of the assessed value of property referred to in section 47-644(c); and

(9) an explanation of all special benefits, incentives, limitations, or credits which relate to real property taxes as a result of this or any other Act. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 425, 88 Stat. 1055.)

§ 47-646. Board of Equalization and Review—Meetings—Appeals—Assessment revisions.

(a) There is established a Board of Equalization and Review for the District (hereinafter in this chapter referred to as the "Board") which shall be composed of fifteen members, a majority of whom shall be residents of the District, appointed by the Commissioner, with the advice and consent of the Council. The Council may authorize a larger size if the caseload so requires. Members of the Board shall be persons having knowledge of the valuation of property, real estate transactions, building costs, accounting, finance, or statistics. The Commissioner shall name one member as Chairman. None of the members may be officers of the District of Columbia government. Each member shall serve for a term of five years, except of the members first appointed under this section, the Commissioner shall designate equal numbers for terms of one, two, three, four, and five years. The terms of the members first appointed under this section shall begin on January 1, 1975. Any person appointed to fill a vacancy shall be appointed to serve for the remainder of the term during which the vacancy arose. Each member shall receive compensation at a rate to be determined by the Council unless otherwise prohibited by law, but not to exceed one two-thousandth of the annual salary of the highest step of grade 15 of the General Schedule in section 5332 of title 5 of the United States Code for each hour such member is engaged

in the actual performance of duties vested in the Board.

(b) The Commissioner shall provide such other support as is needed for the efficient operation of the Board.

(c) The Board shall convene as business necessities from the first Monday in January until the Commissioner shall be presented with the assessment roll for the fiscal year as provided in subsection (g). The Board shall also convene as business necessities for a period of thirty days following any special assessment which shall be generally applicable to a class of real property, and as business in the Board otherwise makes necessary.

(d) A majority of the Board shall constitute a quorum for transacting business, except the Board may provide for the establishment of three member panels for hearing and deciding individual appeals. The Board shall adopt and publish necessary rules, and all applicable provisions of the District of Columbia Administrative Procedures Act (D.C. Code, secs. 1-1501—1-1510) shall apply to the rules and procedure of the Board.

(e) On or before April 15 of each year any taxpayer may appeal the amount of his assessment for the forthcoming fiscal year.

(f) Pursuant to applicable provisions of law, regulations adopted by the Council, or orders of the Commissioner, the Board shall attempt to assure that all real property is assessed at the estimated market value. Based on the record of complaints or of other information available to or solicited by the Board, the Board shall raise or lower the estimated market value of any real property which it finds to be more than 5 per centum above or below the estimated market value contained in the preliminary assessment roll prepared by the Commissioner according to section 47-644 and shall revise the assessment roll accordingly.

(g) On or before June 1 the Board shall present the revised assessment roll for the forthcoming fiscal year to the Commissioner. The Commissioner shall make such further revisions to the assessment roll as are required under other applicable provisions of law, and shall approve such assessment roll not later than June 30. Except as otherwise provided by law, the approved assessment roll shall constitute the basis of assessment for the forthcoming fiscal year and until another assessment roll is made according to law.

(h) Neither the Board nor any court shall order the increase of the assessed value of any parcel of real property above its estimated market value, nor the decrease of the assessed value of any parcel of real property below its estimated market value solely on the basis of average ratio studies comparing sales and assessments, unless such studies are the primary basis for the assessment, or reassessment of the concerned property.

(i) Any person aggrieved by any assessment, equalization, or valuation made, may, by October 15 of the calendar year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sec-

tions 47-2403 and 47-2404, if such person shall have first made his complaint to the Board respecting such assessment as herein provided, except that in any case where no notice in writing of such increase of valuation was given the taxpayer prior to March 15 of the particular year, no such complaint shall be required for appeal. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 426, 88 Stat. 1055; Jan. 3, 1975, Pub. L. 93-635, § 6(f), (g), 88 Stat. 2176.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended the last sentence of subsec. (f) by striking out "section 47-643" and inserting in lieu thereof "section 47-644"; and amended subsec. (i) by striking out "sections 47-2404 and 47-24143" and inserting in lieu thereof "sections 47-2403 and 47-2404".

EFFECTIVE DATE OF 1975 AMENDMENT

See note under § 47-633.

PRIOR PROVISIONS

Provisions which related to composition and functions of the Board of Equalization and Review were formerly contained in act Aug. 14, 1894, ch. 287, § 9, 28 Stat. 284, and act Aug. 17, 1937, ch. 690, title IX, § 5(a), as added May 16, 1938, ch. 223, § 8, 52 Stat. 372, as amended, and were formerly classified to § 47-708.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-633, 47-645.

§ 47-647. Power to administer oaths and summon witnesses—Witness fees—Perjury.

Each assessor of the District, and each assistant assessor, in the discharge of any of his duties, or the Board, may administer all necessary oaths or affirmations. The Commissioner or, in his absence, his designated agent, and the Chairman of the Board, shall have power to summon the attendance of any person to be examined under oath touching such matters and things as the Commissioner or the Board may deem advisable in the discharge of their duties; and any member of the Metropolitan Police force of the District of Columbia may serve subpoenas in his behalf. Such fees shall be allowed witnesses so examined, to be paid out of funds available to the Commissioner, as are allowed in civil actions before the United States District Court for the District of Columbia. Any person summoned and examined as aforesaid who shall knowingly make false oath or affirmation shall be guilty of perjury, and upon conviction thereof be punished according to the laws in force for the punishment of perjury. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 427, 88 Stat. 1056.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

The Board, referred to in text, is the Board of Equalization and Review, see § 47-646(a).

CROSS REFERENCE

Similar provisions, see § 47-606.

§ 47-648. Class actions.

Within one year after September 3, 1974, the Superior Court of the District of Columbia shall establish a method which it deems appropriate by which class action cases regarding any matter relating to real and personal property taxes may be brought before the Superior Court. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 428, 88 Stat. 1057.)

CODIFICATION

"September 3, 1974" was substituted for "the date of enactment of this title".

§ 47-649. Penalties.

Any person who shall refuse or knowingly neglect to perform any duty enjoined on him by law, or who shall consent to or connive at any evasion of the provision of the first section of the Act of March 3, 1881 (D.C. Code, sec. 47-209), or section 13 of the Act of August 14, 1894 (D.C. Code, sec. 47-606), or any other provision of this chapter shall, for each offense, be removed from office and fined not more than \$10,000, or imprisoned for no longer than one year, or both, in the discretion of the court. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 429, 88 Stat. 1057.)

REFERENCES IN TEXT

"The first section of the Act of March 3, 1881 (D.C. Code, sec. 47-209)", referred to in text, appears identical with the original. However, the citation to sec. 47-209 of the Code appears to be erroneous as that section is based on section 14 of Act Aug. 14, 1894, 28 Stat. 285, rather than the 1881 Act. So much of the first section of the 1881 Act as was classified to sec. 47-301 of the Code was repealed by section 474(b) of Act Sept. 3, 1974, Pub. L. 93-407. Other portions of the first section of the 1881 Act have been classified to secs. 7-1206, 32-813, and 47-210 of the Code. The remainder of the first section of the 1881 Act has not been classified to the Code.

"This chapter", referred to in text, in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713.

SUBCHAPTER C.—HOMEOWNER EXEMPTION

§ 47-650. Exemption for low and moderate income families.

(a) In order that the shift to equalized assessment at the same percentage of estimated market value for all properties not result in increases in proportionate tax burden for households of low or moderate income who own or rent property identified on the assessment roll as row dwellings, detached dwellings, or semi-detached dwellings, the Council by regulation is authorized to provide that the amount of up to \$3,000 of market value may be deducted from the estimated market value of some or all of such property.

(b) Subsection (a) shall take effect on and after July 1, 1974. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 430, 88 Stat. 1057.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the

District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBPART D.—TAX INCENTIVES

§ 47-651. Tax incentives—Rehabilitation and new construction in areas—Preservation of historic buildings.

(a) The Council shall, within one year after September 3, 1974, after public hearing, adopt regulations providing tax incentives for the rehabilitation of existing structures and for new construction, including rehabilitation or construction of commercial property, located in areas of the District as designated by the Council. The Council shall also adopt regulations providing tax incentives for the rehabilitation and maintenance of historic buildings. Such tax incentives may include, but are not limited to—

(1) establishing different tax rates for land and for improvements thereon; and

(2) providing that any increase in assessed value of improvements resulting from rehabilitation or new construction be ignored for tax purposes for up to five years from the year of such reassessment.

(b) To be eligible for incentive under this section, historic buildings must be property designated as an historic landmark and conform to the provisions of subpart E. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 431, 88 Stat. 1057; Jan. 3, 1975, Pub. L. 93-635, § 15 (a), (b), 88 Stat. 2178.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCE IN TEXT

"Subpart E", referred to in subsec. (b), refers to subpart E of this subchapter, commencing with § 47-652.

CODIFICATION

In subsec. (a), "September 3, 1974" was substituted for "the date of enactment of this title".

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended subsecs. (a) and (b) by striking out "historic property" and inserting in lieu thereof "historic buildings".

EFFECTIVE DATE

See note under § 47-621.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-632.

SUBPART E.—TAX RELIEF FOR CERTAIN HISTORIC PROPERTIES

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 47-651.

§ 47-652. Assessment of officially designated historic buildings.

For certain officially designated historic buildings in the District, the Commissioner shall, in addition to assessing at full market value, assess land and improvement on the basis of current use and structures of the buildings, which latter assessment, if it is less than full market value, shall be the basis of tax liability to the District. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 432, 88 Stat. 1058; Jan. 3, 1975, Pub. L. 93-635, § 15(c), 88 Stat. 2178.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended section by striking out "property" wherever it appeared therein and inserting in lieu thereof "buildings".

EFFECTIVE DATE

See note under § 47-621.

§ 47-653. Eligibility for historic property tax relief.

To be eligible for historic property tax relief, real property must be a historic building designated by the Joint Committee on Landmarks of the National Capital and, in addition, must be approved by the Commissioner under section 47-654. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 433, 88 Stat. 1058; Jan. 3, 1975, Pub. L. 93-635, § 15(d), 88 Stat. 2178.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended section by striking out "historic property" and inserting in lieu thereof "a historic building"; and by striking out "Planning Commission and the Commission on Fine Arts," immediately following "National Capital".

§ 47-654. Agreements for maintenance and use of historic buildings.

The Council may provide that the owners of historic buildings which have been so designated by the Joint Committee on Landmarks of the National Capital may enter into agreements with the government of the District of Columbia for periods of at least twenty years which will assure the continued maintenance of historic buildings in return for property tax relief. Such a provision shall, as a condition for tax relief, require reasonable assurance that such buildings will be used and properly maintained and such other conditions as the Council finds to be necessary to encourage the preservation of historic buildings. The Council shall also provide for the recovery of back taxes, with interest, which would have been due and payable in the absence of the exemption, if the conditions for such exemption are not fulfilled. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 434, 88 Stat. 1058; Jan. 3, 1975, Pub. L. 93-635, § 15(e), 88 Stat. 2178.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Jan. 3, 1975, Pub. L. 93-635, amended section generally. Prior to amendment the section read: "The Council may provide that the owners of properties which

have been designated historic landmarks by the Joint Committee on Landmarks of the National Capital Planning Commission and the Commission of Fine Arts may enter into agreements with the government of the District of Columbia for periods of at least twenty years which will assure the continued maintenance of historic properties in return for property tax relief. Such a provision shall, as a condition for tax relief, require reasonable assurance that such property will be used and properly maintained and such other conditions as the Council finds to be necessary to encourage the preservation of historic property. The Council shall also provide for the recovery of back taxes, with interest, which would have been due and payable in the absence of the exemption, if the conditions for such exemption are not fulfilled."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-653.

SUBPART F.—TAX DEFERRAL

§ 47-655. Tax deferral—Homeowner whose adjusted gross income does not exceed \$20,000.

(a) An eligible taxpayer may defer each year any real property tax owed in excess of 110 per centum of his immediately preceding year's real property tax liability. To be eligible for such deferral the taxpayer must—

(1) have owned for at least five years the residential real property for which deferral is claimed;

(2) certify that the combined household adjusted gross income (for purposes of District income taxes) does not exceed \$20,000 in one year;

(3) file a written request for deferral on a form prescribed by the Commissioner;

(4) certify that such residential real property is the principal place of residence of the taxpayer;

(5) certify that the zoning classification of such residential property has not changed in the immediately past fiscal year;

(6) certify that increases in the assessed valuation of such residential real property attributable to improvements which increase the intrinsic value of such residential real property are not included in the calculation of the increase in real property tax payable; and

(7) certify that the assessment of such residential real property for the immediately previous fiscal year was not the result of an obvious arithmetical error.

(b) Taxes deferred under this section shall bear interest compounded annually. The rate of interest which shall be applied in each year shall be the average Treasury bill rate for the preceding twelve months as certified by the Secretary of the Treasury to the Commissioner.

(c) No further deferrals of real property tax shall be granted a taxpayer when his deferred tax plus interest equals more than 10 per centum of the current assessed value of his property.

(d) Taxes deferred under this section, together with all accumulated interest, shall constitute a preferential lien upon the real property which shall be immediately payable by the seller, transferor, or conveyer whenever the real property is sold, refinanced, transferred, or conveyed in any manner, or whenever additional co-owners (other than spouse) are added to the real property. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 435, 88 Stat. 1058.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EFFECTIVE DATE

See note under § 47-621.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-656.

§ 47-656. Same; Homeowner whose adjusted gross income exceeds \$20,000.

(a) Any owner of residential real property whose combined household adjusted gross income is in excess of \$20,000, and who meets the qualification specified in clauses (1), (3), (4), (5), and (6) of subsection (a) of section 47-655, may defer the amount of real property tax attributable to an increase by more than 25 per centum in any one year over the assessment of the immediately previous fiscal year. For the purposes of this section and section 47-655, for the fiscal year 1975 the assessed value of all properties assessed at 55 per centum of estimated market value shall be the assessed value of the property divided by 0.55.

(b) Taxes deferred under this section shall bear interest compounded annually. Notwithstanding any other provision of law, the rate of interest which shall be applied in each year is the average Treasury bill rate for the preceding twelve months as certified by the Secretary of the Treasury to the Commissioner.

(c) No further deferrals of real property tax shall be granted a taxpayer when his deferred tax plus interest equals more than 10 per centum of the current assessed value of his property.

(d) Taxes deferred under this section, together with all accumulated interest, shall constitute a preferential lien upon the property which shall be immediately payable by the seller, transferor, or conveyer whenever the property is sold, refinanced, transferred, or conveyed in any manner, or whenever additional co-owners (other than spouse) are added to the property.

(e) The deferral provided in this section shall terminate June 30, 1979 unless specifically extended by the Council. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 436, 88 Stat. 1059.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBPART G.—DISPOSAL OF TAX DELINQUENT PROPERTY TO ENCOURAGE HOMEOWNER-SHIP

§ 47-657. Tax delinquent property to be deeded to District—Redemption.

Notwithstanding any other provision of law, whenever any real property in the District of Columbia has been, or shall hereafter be, offered for sale for nonpayment of taxes or assessments of any kind

whatsoever, and shall have been bid off in the name of the District of Columbia, and two years or more have elapsed since such property was bid off as aforesaid, and the same has not been redeemed as provided by law, the Commissioner of the District may enforce the lien of the District for taxes or other assessments on such real property by ordering that a deed in fee simple to such property be issued by the Commissioner of the District of Columbia to the District of Columbia, and up to the time of the issuance of the deed such property may be redeemed by the owner or other person having an interest therein by the payment of all taxes or assessments due the District of Columbia upon said property, and all legal penalties, interest and costs thereon, together with such other expenses and costs, including costs of publication, as may have been incurred by the District. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 437, 88 Stat. 1059.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

EFFECTIVE DATE

See note under § 47-621.

CROSS REFERENCE

Delinquent tax list, publication of notice, competitive proposals, sales, see § 47-1001.

§ 47-658. Council to establish program for homeowner-ship of tax delinquent property.

The Council is hereby authorized to establish a program whereby title to properties acquired by tax sale pursuant to section 47-657 may, for whatever sum it deems appropriate, be transferred to persons meeting criteria which shall be established by the Council, who guarantee to pay taxes on and to live in the property for at least five years, and who give assurance of bringing such property into reasonable compliance with the building code in the District. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 438, 88 Stat. 1059.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-657.

SUBCHAPTER III.—MISCELLANEOUS

§ 47-661. Regulations—Penalties.

Except as specifically provided in this chapter, or in other provisions of law applicable to the District of Columbia, the Council may by regulation establish penalties for violations of any provisions of this chapter, including any regulation issued pursuant to this chapter. Such penalties may not exceed imprisonment for longer than one year, or a fine not to exceed \$10,000, or both, for each offense. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 477, 88 Stat. 1065; Jan. 3, 1975, Pub. L. 93-635, § 8(d), 88 Stat. 2177.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REFERENCES IN TEXT

"This chapter", referred to in text, in the original was "this title", meaning title IV of Act Sept. 3, 1974, Pub. L. 93-407. Such title IV enacted this chapter, §§ 47-504, 47-801-1, 47-1567g, and provisions set out as notes under §§ 47-504, 47-621, 47-632; amended §§ 47-801a, 47-2405, 47-2601; and repealed §§ 47-301, 47-501a, 47-602 to 47-605, 47-701 to 47-709, 47-713.

AMENDMENT

1975—Section 8(d) of Act Jan. 3, 1975, Pub. L. 93-635, amended section by striking out "Act" and inserting in lieu thereof "chapter".

EFFECTIVE DATE OF 1975 AMENDMENT

Section 8(e) of Act Jan. 3, 1975, Pub. L. 93-635, provided: "The amendments made by this section shall take effect on and after September 3, 1974."

Chapter 7.—ASSESSMENT OF REAL PROPERTY

Sec.
47-701 to 47-709. Repealed.
47-713. Repealed.

§§ 47-701, 47-702. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(f), 88 Stat. 1065.

Section 47-701, Act Aug. 14, 1894, ch. 287, § 1, 28 Stat. 282, provided that assessments be made in the name of the owner, and is now covered by § 47-643.

Section 47-702, Acts Aug. 14, 1894, 28 Stat. 283, ch. 287, § 3; Sept. 1, 1916, 39 Stat. 678, ch. 433; July 3, 1926, 44 Stat. 834, ch. 759, § 10, provided that assessments be made annually, and is now covered by § 47-641.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that these sections are repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

NOTES TO DECISIONS UNDER FORMER § 47-701

Notice of assessment

Heirs at law of deceased record owner of realty were not deprived of due process of law by tax sale of the property without actual notice where the district complied with the statutory requirements on notice and the provisions governing the manner in which real property is to be assessed, i. e., mailing the required notices to the record owner. *W. J. Moore et al. v. Government of the District of Columbia et al.* (D.C. App. 1975, 332 A.2d 749).

Although statutory scheme relating to tax sales might be considered for modernization, i. e., so as to avoid tax sales of property without actual notice to a property owner, such as where the record owner has died and his property has passed to others, such task is not for the court but, rather, for the legislature. *Id.*

§ 47-703. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(h), 88 Stat. 1065.

Section, Act Mar. 3, 1883, ch. 137, § 5, 22 Stat. 569, provided that assessments be by lot and square, and is now covered by § 47-643.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§§ 47-704 to 47-707. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(f), 88 Stat. 1065.

Section 47-704, Act Aug. 14, 1894, ch. 287, § 4, 28 Stat. 283, required the District Commissioner to supply the Board of Assistant Assessors with plats.

Section 47-705, Act Aug. 14, 1894, ch. 287, § 6, 28 Stat. 283, provided that the Board Assistant Assessor's valuation be made separately for improvements and each tract or lot, and is now covered by § 47-642.

Section 47-706, Acts Aug. 14, 1894, 28 Stat. 283, ch. 287, § 7; Sept. 1, 1916, 39 Stat. 678, ch. 433; July 3, 1926, 44 Stat. 834, ch. 759, § 10, required Board of Assistant Assessors to make annual tabulated report of property assessed, and is now covered by § 47-644.

Section 47-707, Act Aug. 14, 1894, ch. 287, § 8, 28 Stat. 283, provided penalties for violations of the Act.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that these sections are repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621.

§§ 47-708, 47-709. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(g), 88 Stat. 1065; Jan. 3, 1975, Pub. L. 93-635, § 9, 88 Stat. 2177.

Section 47-708, Acts Aug. 17, 1937, ch. 690, title IX, § 5(a) (1st five sentences), as added May 16, 1938, 52 Stat. 372, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV § 5(b); July 10, 1952, 66 Stat. 544, ch. 649, § 3(c), related to the composition and duties of the Board of Equalization and Review, and is now covered by § 47-646.

Section 47-709, Act Aug. 17, 1937, ch. 690, title IX, § 5(a) (last three sentences), as added May 16, 1938, 52 Stat. 372, § 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5(b); July 10, 1952, 66 Stat. 544, ch. 649, § 3(c); July 29, 1970, Pub. L. 91-358, title I, § 161(a)(5), 84 Stat. 580, provided that valuation of real property be complete on the first Monday of May annually, that the valuation be approved by the Commissioner by July 1, annually, and constitute the basis for taxation; and provided for appeals for persons aggrieved by any assessment, equalization, or valuation. See new § 47-646.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that these sections are repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621. Section 9 of Act Jan. 3, 1975, Pub. L. 93-635, also provision that these sections are repealed effective June 30, 1975.

NOTES TO DECISIONS UNDER FORMER § 47-709

Exhaustion of administrative remedy

Where taxing officials did not disclose change in assessment levels until after time for administrative review of District of Columbia tax assessments had passed, affected real property owners were not barred from seeking injunctive relief by their failure to exhaust administrative remedies. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

Injunctions

Where real property owners who had not sought administrative review of District of Columbia tax assessments were excused from so doing because of lack of knowledge that debasement factor had been raised, those property owners who had sought administrative review of assessments would not be required to wait statutory period and pay tax before applying for relief by injunction. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

— Compliance

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view as de minimis differences in amounts of real property taxes between the methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A.2d 305).

§ 47-710. Real property and improvements becoming subject to taxation to be listed annually.

CROSS REFERENCE

Composition and functions of Board of Equalization and Review, see § 47-646.

NOTES TO DECISIONS

Assessment

Since taxpayer's allegation that taxes imposed on building which was completed in second half of the year should have been imposed only for the second half and should not have been imposed under statute providing for annual assessment was an attack on the propriety of the annual assessment, taxpayer's attack was on entire assessment, even though taxpayer recognized validity of assessment for the second half, and Superior Court was without jurisdiction to hear the appeal where taxpayer had paid only the first installment of the tax. *George Hyman Construction Co. et al. v. District of Columbia* (D.C. App. 1974, 315 A.2d 175).

§ 47-711. New buildings under roof to be included in list.

PRIOR PROVISIONS

Provisions which related to the assessment of new buildings under roof were formerly contained in act July 3, 1926, ch. 759, § 3, 44 Stat. 833.

CROSS REFERENCE

Composition and functions of Board of Equalization and Review, see § 47-646.

NOTES TO DECISIONS

Assessment

Since taxpayer's allegation that taxes imposed on building which was completed in second half of the year should have been imposed only for the second half and should not have been imposed under statute providing for annual assessment was an attack on the propriety of the annual assessment, taxpayer's attack was on entire assessment, even though taxpayer recognized validity of assessment for the second half, and Superior Court was without jurisdiction to hear the appeal where taxpayer had paid only the first installment of the tax. *George Hyman Construction Co. et al. v. District of Columbia* (D.C. App. 1974, 315 A.2d 175).

§ 47-712. Assessment of omitted property—Voided assessments, reassessment of property.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-2405.

§ 47-713. Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(e), 88 Stat. 1065; Jan. 3, 1975, Pub. L. 93-635, § 9, 88 Stat. 2177.

Section, Acts July 1, 1902, 32 Stat. 616, ch. 1352, § 5; Mar. 1, 1921, 41 Stat. 1195, ch. 95, § 1; June 29, 1922, 42 Stat. 669, ch. 249; July 3, 1926, 44 Stat. 833, ch. 759, § 4, provided for assessments according to true value of the property, and for taxes on subdivisions made from July to December, and is now covered by § 47-641.

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is repealed effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621. Section 9 of Act Jan. 3, 1975, Pub. L. 93-635, also provided that this section is repealed effective June 30, 1975.

NOTES TO DECISIONS UNDER PRIOR LAW

Debasement

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view

as de minimis differences in amounts of real property taxes between the methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A.2d 305).

Action of District of Columbia taxing authorities in raising debasement factor as to some but not all single-family residences from 55 to 60 percent of fair market value, without any administrative resort left to the taxpayers for amelioration of tax inequities, was unconstitutional and arbitrary action, despite contention that action was taken as part of effort to equalize tax assessments through "stair step" increases of debasement factor for single-family residences so as to bring such properties ultimately into equality with other types of property. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

Parties in court suit

Where class of taxpayers sought to be represented by purported intervenors in suit brought on behalf of city commercial property owners seeking declaratory judgment that practice of assessing commercial property at higher percentage of market value than residential property violated this section and the Fifth Amendment had economic interest in outcome of suit, and District of Columbia, which had agreed to set up single level of assessment and had not denied that its dual assessments violated this section and Fifth Amendment principles of equal protection, did not adequately represent such taxpayers, proposed intervenors should be allowed to intervene under Superior Court rule on behalf of all taxpayers other than commercial ones. *Calvin-Humphrey et al. v. District of Columbia et al.* (D.C. App. 1975, 340 A.2d 795).

Rulemaking

Interpretation or implementation by taxing authorities of words "full and true value" by changing debasement factor for taxation of single-family residences from 55 percent of estimated market value to 60 percent is, within meaning of District of Columbia Administrative Procedure Act, "rulemaking" such as to require publication of notice despite contention that change was part of effort to equalize District of Columbia tax assessments as required by Constitution. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

§ 47-716. Application for redistribution or reassessment—Notice—Validity.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Composition and functions of Board of Equalization and Review, see § 47-646.

§ 47-717. Reassessment of real estate by Board of Assistant Assessors.

The Board of Assistant Assessors charged with the assessment of real estate in the District of Columbia is hereby authorized and directed to reassess or redistribute any such general or special assessment or tax levied or due and unpaid in accordance with the provisions of laws for the assessment and equalizations of the valuations of real estate in the District of Columbia for taxation, after notice to owners of record of the land to be assessed, with right of appeal within ten days to the Board of Equalization and Review, as prescribed in section 9 of the Act of August 14, 1894 (28 Stat. 284); and the assessor of said District is hereby authorized and directed to promptly reassess or redistribute any general or special assessment of any kind levied or due and unpaid, as hereinbefore provided. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 5.)

REFERENCE IN TEXT

Section 9 of the Act of August 14, 1894, referred to in text, was formerly classified to § 47-708. It was superseded by section 5(a) of the District of Columbia Revenue Act, 1937, as added May 16, 1938, ch. 223, § 8, 52 Stat. 372, which was classified in part to § 47-708. Such section 5(a) was repealed in part by section 474(g) of Act Sept. 3, 1974, Pub. L. 93-407, 88 Stat. 1065. Present provisions relating to the Board of Equalization and Review are set out in § 47-646.

§ 47-721. Reassessment of taxes declared void by court.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-722. Valuation of United States property in the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 8.—EXEMPTIONS FROM TAXATION

Sec.

§ 47-801-1. Publication of list of exempt property.

§ 47-801-1. Publication of list of exempt property.

The Mayor shall publish, by class and by individual property, a listing of all real property exempt from the real property tax in the District. Such listing shall include the address, lot, and square, the name of the owner, the assessed value of the land and improvements of such property, and the amount of the tax exemption in the previous fiscal year. (Sept. 3, 1974, Pub. L. 93-407, title IV, § 442, 88 Stat. 1060.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was enacted by title IV of Act Sept. 3, 1974, Pub. L. 93-407, and is therefore subject to the definitions and regulations provisions of such title IV, as set out in §§ 47-622 and 47-661.

EFFECTIVE DATE

See note under § 47-621.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 47-801a. Government property—Property of educational, charitable, religious or scientific institutions—Profits arising from sale of property.

The real property exempt from taxation in the District of Columbia shall be the following and none other:

(s) Buildings owned by and actually occupied and used for legitimate theater, music, or dance purposes by a corporation which is not organized or operated for commercial purposes or for private gain, which buildings are open to the public, generally, and for admission to which charges may be made to cover the cost of expenses. (As amended Sept. 3, 1974, Pub. L. 93-407, title IV, § 441, 88 Stat. 1060; Jan. 3, 1975, Pub. L. 93-635, § 8(a), 88 Stat. 2177.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Par. (s), being enacted by title IV of Act Sept. 3, 1974, Pub. L. 93-407, is therefore subject to the definitions and regulations provisions of such title IV, as set out in §§ 47-622 and 47-661.

AMENDMENTS

1975—Section 8(a) of Act Jan. 3, 1975, Pub. L. 93-635, made a technical amendment to the 1974 amendatory act (sec. 441 of Pub. L. 93-407) without making change in the text of the section. Section 8(e) of such Act made this amendment effective on and after Sept. 3, 1974.

1974—Section 441 of Act Sept. 3, 1974, Pub. L. 93-407, added par. (s).

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 47-621.

CROSS REFERENCE

Exemption of international organizations from property taxes, see 22 U.S.C. 288c.

NOTES TO DECISIONS

Construction

Where January 5, 1971 was the effective date of amendment of this section providing, *inter alia*, that any building should not be considered a building used for purposes of public charity, “* * * except that this sentence will not apply to those organizations granted an exemption under this paragraph before the date of enactment of this sentence.”, the specific exception or saving clause was controlling, and neither the District of Columbia nor any court had jurisdiction to make thereafter a determination of binding legal effect that the building and grounds of taxpayer corporation were used for purposes of public charity and, thus, exempt from taxation. *District of Columbia v. Linda Pollin Memorial Housing Corporation* (D.C. App. 1973, 313 A. 2d 579).

Subsection (m) of this section exempting from real property tax the property of churches, including buildings and structures reasonably necessary and usual in the performance of activities of the church, and subsection (n) exempting from property tax the buildings which belong to religious corporations or societies and which are primarily and regularly used for religious worship, study, training and missionary activities, are not mutually exclusive, but are complementary; Congress enacted the latter subsection to provide tax exemption to organizations with buildings which, by virtue of their use, could not be classified as churches, but which Congress felt should nonetheless be exempt from real property tax due to character of work carried on within. *District of Columbia v. The Maryland Synod of the Lutheran Church in America* (D.C. App. 1973, 307 A. 2d 735).

Educational purposes

Fact that nonprofit professional resident theater and drama school spent nearly five times more money for its professional theater productions than it did for the school and that the productions generated over five times more income than the school tuitions, although relevant, was not a crucial factor in determining whether school should be granted exemption from real estate taxation on basis that it was an educational institution. *The Washington*

Theater Club, Inc. v. District of Columbia (1973, 311 A. 2d 492).

Religious corporation

Real property which was owned by religious organization and rented by the organization with an offer to purchase to church and which the church used primarily and regularly for religious worship, study, training and missionary activities was exempt from real estate tax under subsection (n) of this section exempting from real property tax the buildings which belong to religious corporations or societies and which are primarily and regularly used for religious worship, study, training, and missionary activities. *District of Columbia v. The Maryland Synod of the Lutheran Church in America* (D.C. App. 1973, 307 A. 2d 735).

Fact that rent or income was secured from exempt property was not, standing alone, sufficient reason to assess and tax the property; rather, crux of exemption determination was use of the property and not fact that income might be derived from it. *Id.*

§ 47-801c. Report as to use of exempt property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-801d. Abatement or refund of tax assessed against exempt property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-801e. Appeal.

NOTES TO DECISIONS

Time to appeal

Requirement that petition contesting assessment of real property be filed within six months "after payment of the tax" applies to tax exempt property, and such six-month period runs from date of assessment. *National Graduate University v. District of Columbia* (D.C. App. 1975, 346 A.2d 740).

§ 47-801f. Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 10.—REAL PROPERTY TAX SALES

§ 47-1001. Delinquent tax list—Publication of notice—Competitive proposals—Sale.

The assessor of the District of Columbia shall prepare a list of all taxes on real property in said District subject to taxation on which said taxes are levied and in arrears on the first day of July of each year hereafter; and the Council of the District of Columbia shall fix date of sale. The notice of sale and the delinquent tax list shall be advertised according to regulations prescribed by the Council of the District of Columbia in not less than two major daily newspapers published in the District. If the taxes due, together with the penalties and costs that may have

accrued thereon, shall not be paid prior to the day fixed for sale, the property will be sold, under the direction of the Mayor of the District of Columbia, at public auction at the office of the said collector of taxes, commencing at least three weeks after the first publication of said notice and continuing on each following day, Sundays and legal holidays excepted, until all said delinquent property is sold; a description sufficient to identify the property shall be considered a proper description. (Feb. 28, 1898, 30 Stat. 250, ch. 32, § 1; July 1, 1902, 32 Stat. 632, ch. 1358, § 1(1); July 3, 1926, 44 Stat. 834, ch. 759, § 9; Mar. 2, 1927, 44 Stat. 1303, ch. 271; May 21, 1928, 45 Stat. 650, ch. 659; Feb. 25, 1929, 45 Stat. 1268, ch. 314; Oct. 26, 1973, Pub. L. 93-140, § 25(a), 87 Stat. 508.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Acts Feb. 28, 1898, July 1, 1902, and July 3, 1926, contained a provision for the publication of a pamphlet and for notice of the publication thereof. Acts Mar. 3, 1927, May 21, 1928, and Feb. 25, 1929, abolished this pamphlet and enacted the following provisions which (prior to enactment of Act Oct. 26, 1973) were set out as the second sentence of this section: "The notice of sale and the delinquent tax list shall be advertised once a week for two weeks in the regular issue of one morning and one evening newspaper published in the District of Columbia; and notice shall be given, by advertising twice a week for two successive weeks in the regular issue of two daily newspapers published in the District of Columbia, that such delinquent tax list has been published in two daily newspapers, giving the name of each and the dates and the issues containing said list, and such notice shall be published in the two weeks immediately following the week in which the delinquent tax list shall have been published: *Provided further*, That competitive proposals shall be invited by the Commissioner of the District of Columbia from the several newspapers published in the District of Columbia for publishing the said delinquent tax list."

AMENDMENT

1973—Act Oct. 26, 1973, amended second sentence generally. For prior provisions, see "Codification" note above.

APPROPRIATIONS

See note under § 1-226a.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising, see § 1-809.

Disposal of tax delinquent property to encourage homeownership, see §§ 47-657, 47-658.

NOTES TO DECISIONS

Notice—Deceased owners

Heirs at law of deceased record owner of realty were not deprived of due process of law by tax sale of the property without actual notice where the district complied with the statutory requirements on notice and the provisions governing the manner in which real property is to be assessed, i.e., mailing the required notices to the record owner. *W. J. Moore et al. v. Government of the District of Columbia et al.* (D.C. App. 1975, 332 A.2d 749).

Although statutory scheme relating to tax sales might be considered for modernization, i.e., so as to avoid tax sales of property without actual notice to a property owner, such as where the record owner has died and his property has passed to others, such task is not for the court but, rather, for the legislature. *Id.*

— Sufficiency

Where final notice of delinquency was mailed to landowner, announcing that further nonpayment would result in sale, and where certified or registered letter notifying landowner that redemption period was soon to expire was received by person who customarily delivered mail to the landowner, fact that the landowner claimed that he did not receive any notice does not prove that efforts of the District of Columbia to notify him were insufficient. *T. L. Dodson v. T. J. Scheve et al.* (D.C. App. 1975, 339 A.2d 39; cert. denied 96 S. Ct. 1103, 424 U.S. 909).

§ 47-1001a. Notice to record owner of amount of tax levy.

NOTES TO DECISIONS

Notice—Deceased owners

Heirs at law of deceased record owner of realty were not deprived of due process of law by tax sale of the property without actual notice where the district complied with the statutory requirements on notice and the provisions governing the manner in which real property is to be assessed, i.e., mailing the required notices to the record owner. *W. J. Moore et al. v. Government of the District of Columbia et al.* (D.C. App. 1975, 332 A.2d 749).

Although statutory scheme relating to tax sales might be considered for modernization, i.e., so as to avoid tax sales of property without actual notice to a property owner, such as where the record owner has died and his property has passed to others, such task is not for the court but, rather, for the legislature. *Id.*

— Sufficiency

Where final notice of delinquency was mailed to landowner, announcing that further nonpayment would result in sale, and where certified or registered letter notifying landowner that redemption period was soon to expire was received by person who customarily delivered mail to the landowner, fact that the landowner claimed that he did not receive any notice does not prove that efforts of the District of Columbia to notify him were insufficient. *T. L. Dodson v. T. J. Scheve et al.* (D.C. App. 1975, 339 A.2d 39; cert. denied 96 S. Ct. 1103, 424 U.S. 909).

§ 47-1002. Sale of property—Purchase by District.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1003. Deposit required—Certificate of sale—Tax deed—Redemption.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1007. Commissioner not to convey any property if sale is void.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1008. Payment of expenses of advertising.

The expenses of advertising the notice of sale and delinquent tax list for real property taxes, water charges, sanitary sewer service charges, and special assessments in arrears together with penalties and

costs, shall be reimbursed to the District by a charge to be fixed annually by the Mayor and assessed against each lot or piece of property advertised. The amounts so received shall be deposited to such fund of the District as the Mayor shall from time to time determine. (Feb. 28, 1898, 30 Stat. 252, ch. 32, § 7; July 1, 1902, 32 Stat. 635, ch. 1358, § 1(7); May 21, 1928, 45 Stat. 650, ch. 659; Oct. 26, 1973, Pub. L. 93-140, § 25(b), 87 Stat. 508.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1973—Act Oct. 26, 1973, amended section generally. Prior to amendment, the section read: "The expenses of advertising shall be paid by a charge of fifty cents for each lot or piece of property advertised."

1928—Act May 21, 1928, deleted the words "and the printing of said pamphlet" following the word "advertising".

1902—Act July 1, 1902, reduced the charge from one dollar and twenty cents to fifty cents.

APPROPRIATIONS

See note under § 1-226a.

CHARGE FOR PROPERTY ADVERTISED

The District of Columbia Appropriation Act, 1961 (approved Apr. 8, 1960, Pub. L. 86-412, 74 Stat. 18), authorized the Commissioners to fix annually a charge "for each lot or piece of property advertised". This authority was continued by subsequent Appropriation Acts, and was last continued for fiscal year 1974 by § 10 of the District of Columbia Appropriation Act, 1974 (approved Aug. 14, 1973, Pub. L. 93-91, 87 Stat. 310).

§ 47-1011. Liens on real estate for unpaid taxes—Enforcement—Redemption before sale.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1012. Real estate to be sold—Notice to owner—Parties defendant—Court order—Validity of service and sale.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

NOTES TO DECISIONS

Notice—Deceased owners

Heirs at law of deceased record owner of realty were not deprived of due process of law by tax sale of the property without actual notice where the district complied with the statutory requirements on notice and the provisions governing the manner in which real property is to be assessed, i. e., mailing the required notices to the record

owner. *W. J. Moore et al. v. Government of the District of Columbia et al.* (D.C. App. 1975, 332 A.2d 749).

Although statutory scheme relating to tax sales might be considered for modernization, i.e., so as to avoid tax sales of property without actual notice to a property owner, such as where the record owner has died and his property has passed to others, such task is not for the court but, rather, for the legislature. *Id.*

§ 47-1013. Court to decree sale—No penalty if defect in tax sale.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 47-1016. Taxes erroneously paid to be refunded.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 11.—SPECIAL ASSESSMENTS

§ 47-1101. Protest against special assessment—Hearing—Report and exceptions—Decision.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1102. Abatement, reduction, or adjustment of special assessment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1103. Notice of levying of special assessment—Publication—Payment of special assessment—Interest.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 47-1106. Reassessment where special assessment set aside—Hearing—Agent's report to Commissioners.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 12.—TAXATION OF PERSONAL PROPERTY

§ 47-1202. Personal property to be assessed at full value.

CODIFICATION

That portion of the source statute relating to assessment of real property was classified to § 47-713. Section 47-713, as based on the first paragraph of section 5 of Act

July 1, 1902 (32 Stat. 616), was repealed by section 474(e) of Act Sept. 3, 1974, Pub. L. 93-407, 88 Stat. 1065.

§ 47-1207. Rate of taxation—Exceptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Property in bonded warehouse

Taxing authority of District of Columbia does not extend to storage of imported alcoholic beverages in bonded warehouse prior to sale; accordingly, importer who held such beverages in bonded warehouse for sale to diplomatic representatives of foreign governments was not liable for personal property taxes. *District of Columbia v. Samuel Meisel & Company, Inc.* (D.C. App. 1974, 316 A.2d 546).

§ 47-1208. Personal property exempt from taxation.

NOTES TO DECISIONS

Property in bonded warehouse

Taxing authority of District of Columbia does not extend to storage of imported alcoholic beverages in bonded warehouse prior to sale; accordingly, importer who held such beverages in bonded warehouse for sale to diplomatic representatives of foreign governments was not liable for personal property taxes. *District of Columbia v. Samuel Meisel & Company, Inc.* (D.C. App. 1974, 316 A.2d 546).

§ 47-1209. Payment of taxes—To be made semianually—Mandamus to compel filing sworn return—Expenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1212. Mercantile establishments and carriers by water.

NOTES TO DECISIONS

Stock in trade

Where art objects were consigned and not sold to art gallery, such art objects did not constitute part of gallery's "stock in trade" so as to be taxable to gallery under personal property tax on stock in trade. *District of Columbia v. Powers Gallery, Inc.* (D.C. App. 1975, 335 A.2d 244).

§ 47-1214. Clerk of board of personal tax appraisers—Appointment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 13.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY DISTRAINT OR LEVY

§ 47-1301. Distraint of property for nonpayment of taxes—Sale—Disposition of surplus.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

§ 47-1302. Sale of distrained goods for nonpayment of taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 14.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY ACQUISITION OF LIEN

§ 47-1402. Neglect or refusal to pay personal property taxes—Collection by distraint—Levy—Public notice of intended sale—Sale to be public—Report—Disposition of surplus above taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1407. Wrongful distraints—Recoveries.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1412. Secrecy of returns.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 15.—INCOME AND FRANCHISE TAXES

SUBCHAPTER II.—INCOME AND FRANCHISE TAXES FOR TAXABLE YEARS AFTER JANUARY 1, 1947

TITLE VI.—TAX ON RESIDENTS AND NONRESIDENTS

Sec.

47-1567a. Personal exemptions.

47-1567e. Repealed.

47-1567f. Credit for campaign contributions.

47-1567g. Credit for property taxes accrued and payable by District of Columbia residents.

SUBCHAPTER I.—INCOME TAX FOR TAXABLE YEARS PRIOR TO JANUARY 1, 1947

§ 47-1504. Gross income and exclusions therefrom.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District

of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1505. Deductions from gross income.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1509. Personal exemptions and credit for dependents.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1513. Installment basis.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1515. Individual returns—Husband and wife—Persons under disability—Fiduciaries.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1516. Corporation returns.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1523. Fiduciary returns.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1528. Information from the Bureau of Internal Revenue.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1529. Assessor to administer.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1535. Closing agreements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1536. Compromises—Concealment of assets—Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1537. Failure to file return.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1543. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1544. Information returns.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1545. Withholding of tax at source.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1546. Licenses — Corporations liable—Duration—Posting — Revocation — Renewal — Penalties — "Business" defined.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SUBCHAPTER II.—INCOME AND FRANCHISE TAXES FOR TAXABLE YEARS AFTER JANUARY 1, 1947

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1-1182, 5-916, 21-311, 26-702, 47-504, 47-1701, 47-2413.

TITLE I.—REPEAL OF PRIOR INCOME TAX LAW AND APPLICABILITY OF SUBCHAPTER; GENERAL DEFINITIONS

§ 47-1551. Repeal of subchapter I and retention of certain provisions thereof.

SHORT TITLE

The first section of act Oct. 21, 1975, D.C. Law 1-23, provided "That this act [for classification of act see Tables] may be cited as the 'Revenue Act of 1975'."

SEVERABILITY AND SAVINGS PROVISIONS OF D.C. LAW 1-23

Section 802 of act Oct. 21, 1975, D.C. Law 1-23, title VIII, provided:

"Sec. 802(a) If any provision of this act, including any amendment made by this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, including the remaining amendments, and the application of such provision to other persons or circumstances shall not be affected thereby.

"(b) The repeal or amendment by this Act of any provision of law shall not affect any act done or any right accrued or accruing under such provision of law before the effective date of this Act or any suit or proceeding had or commenced before the effective date of this Act, but all such rights and liabilities in the same manner and to the same extent, as if such repeal or amendment had not been made.

"(c) All offenses committed, and all penalties incurred, prior to the effective date of this Act, under any provision of law hereby repealed or amended, may be prosecuted and punished in the same manner and with the same effect as if this Act had not been enacted."

REPORT ON TOTAL IMPACT OF TAXES AND USER CHARGES

Section 602 of act Oct. 21, 1975, D.C. Law 1-23, provided: "The Mayor of the District of Columbia shall, within six months after the effective date of this section, submit to the Finance and Revenue Committee of the Council of the District of Columbia and to the District of Columbia Auditor, a report which shall analyze the total impact of all District of Columbia taxes and user charges. This report shall set forth all information which the Mayor deems useful to a full understanding of the impact of the tax structure. It shall specifically set forth the impact and revenue of all taxes, as a sum, on individual residents grouped by income class and family status, (including unmarried, married, single parent, retired, and such other classifications as are appropriate). The same analysis shall be given for each separate tax on individuals. Such analysis shall include consideration of business taxes and charges likely to be passed on to consumers. The report shall also set forth the impact and revenue of each tax on commercial and professional activity, and on businesses grouped by type and size of business activity. In addition to the impact and revenue analysis, the report shall set forth the distribution of returns for each tax grouped by quartile of revenue starting from the quartile containing the fewest returns. An estimate of the revenue effect and collection expense should be given for changes in major exemptions and deductions."

§ 47-1551c. General definitions.

For the purposes of this subchapter and wherever appearing herein, unless otherwise required by the context—

* * * * *

(h) The words "trade or business" include the engaging in or carrying on of any trade, business, profession, vocation or calling or commercial activity

in the District of Columbia; and include the performance of the functions of a public office: *Provided, however,* That the words "trade or business" shall not include, for the purposes of this subchapter—

(1) Sales of tangible personal property whereby title to such property passes within or without the District, by a corporation or unincorporated business which does not physically have or maintain an office, warehouse, or other place of business in the District, and which has no officer, agent, or representative having an office or other place of business in the District, during the taxable year; or

(2) Repealed. Oct. 21, 1975, D.C. Law 1-23, title VI, § 609, 22 DCR 2114.

For purposes of this proviso, the words "agent" or "representative" shall not include any independent broker engaged independently in regularly soliciting orders in the District for sellers and who holds himself out as such.

* * * * *

(u) The term "dependent" means a dependent as defined in section 152 of the Internal Revenue Code of 1954 [26 U.S.C. 152].

(v) The term "head of a family" means an individual who maintains in one household one or more dependents as defined in paragraph (u) of this section. The term "head of a family" means an individual who is single, or if married, separated from husband or wife.

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, §§ 601 (1), (2), 609, 22 DCR 2105, 2106, 2114.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section as follows:

- (1) Repealed subsec. (h) (2).
- (2) Amended subsec. (u) generally.
- (3) Amended the last sentence of subsec. (v) generally.

EFFECTIVE DATE OF 1975 AMENDMENT

Sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, provided: "The amendments made by section 601 [amending §§ 47-1551c, 47-1554, 47-1557a, 47-1557b, 47-1564a, 47-1567a, 47-1567b, and repealing § 47-1567e] shall apply with respect to taxable years beginning on and after January 1, 1975."

Sec. 801(g) of act Oct. 21, 1975, D.C. Law 1-23, provided: "Sections 603, 604, 605, and 609 [amending §§ 47-1571a, 47-1574b, 47-1574, and 47-1551c, respectively] shall take effect with taxable years beginning on and after January 1, 1975."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-147, 47-1561, 47-1580.

TITLE II.—EXEMPT ORGANIZATIONS

§ 47-1554. Exempt organizations.

The following organizations shall be exempt from taxation under this subchapter, except to the extent that such organizations have unrelated business tax-

able income subject to tax under sections 511 of the Internal Revenue Code of 1954 [26 U.S.C. 511], in which event such organizations shall be subject to tax under this article on said unrelated business taxable income:

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(3), 22 DCR 2106.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended the commencing phrase generally to add the exception relating to organizations having unrelated business taxable income.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1-1180.

TITLE III.—NET INCOME, GROSS INCOME AND EXCLUSIONS THEREFROM, AND DEDUCTIONS

§ 47-1557a. Gross income and exclusions therefrom.

* * * * *

(b) The words "gross income" shall not include the following:

* * * * *

(18) *Unemployment Compensation.*—Payments received by an individual from the District of Columbia Unemployment Compensation Board or a similar State agency for those periods during which he is unemployed.

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(4), 22 DCR 2106.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended subsec. (b) by adding at the end thereof a new par. (18).

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29-933, 47-1567g, 47-1577i, 47-1580.

§ 47-1557b. Deductions.

(a) *Deductions allowed.*—The following deductions shall be allowed from gross income in computing net income:

* * * * *

(15) *Reasonable allowance for salaries.*—A reasonable allowance for salaries or other compensation for personal services actually rendered: *Provided, however,* That in the case of an unincorporated business the aggregate deduction for services rendered by the individual owners or members actively engaged in the conduct of the unincorporated business shall in no event exceed 55 per centum of the net income of such business

computed without benefit of this deduction: *Provided further*, That nothing herein contained shall be construed to exempt any salary or other compensation for personal services from taxation as a part of the taxable income of the person receiving the same.

* * * * *

(17) *Real estate investment trusts*.—In the case of a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1954, which meets the requirements of section 857(a) of the Internal Revenue Code of 1954, the dividends paid by the real estate investment trust which qualify for the dividends-paid deduction under section 857(b) (2) (C) and section 857(b) (3) (A) (ii) of the Internal Revenue Code of 1954, including dividends considered as having been paid during the taxable year by reason of section 858 of the Internal Revenue Code of 1954.

(18) *Household and Dependent Care Services*.—To the same extent that such amount is deductible under section 214 of the Internal Revenue Code of 1954 [26 U.S.C. 214], any amount expended by an individual for household and dependent care services necessary for gainful employment; *Provided*, however, that the requirement of section 214 of the Internal Revenue Code of 1954 that married couples must file a single return jointly, shall not be applicable.

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(5), (6), 22 DCR 2107; Nov. 1, 1975, D.C. Law 1-31, § 2, 22 DCR 2547.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Act Nov. 1, 1957, D.C. Law 1-31, amended subsec. (a) (15) by striking out the figure "20" and inserting in lieu thereof "55".

Act Oct. 21, 1975, D.C. Law 1-23, renumbered par. (16) of subsec. (a), relating to Real Estate Investment Trusts, as par. (17), and added par. (18) relating to Household and Dependent Care Services.

EFFECTIVE DATE OF 1975 AMENDMENT BY D.C. LAW 1-31

Section 3 of Act Nov. 1, 1975, D.C. Law 1-31, provided that "This act [amending § 47-1557b(a) (15)] shall apply with respect to taxable years beginning on and after January 1, 1975."

EFFECTIVE DATE OF 1975 AMENDMENT MADE BY D.C. LAW 1-23

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

SHORT TITLE

The first section of Act Nov. 1, 1975, D.C. Law 1-31, provided "That this act [amending § 47-1557b(a) (15)] may be cited as the 'District of Columbia Unincorporated Business Franchise Tax Revision Act of 1975.'"

TITLE V.—RETURNS

§ 47-1564. Form of returns and duty to file.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1564b, 47-1564c.

§ 47-1564a. Requirement—Who must file.

Each of the following persons shall file a return with the Assessor stating specifically the items of his gross income and the items claimed as deductions and credits allowed under this subchapter, and such other information for the purpose of carrying out the provisions of this subchapter as the Assessor may require:

(a) *Residents and nonresidents*.—Every nonresident of the District receiving income subject to tax under this subchapter and every resident of the District, except fiduciaries, when—

(1) his gross income for the taxable year, if single, or if married and not living with husband or wife, exceeds the personal exemptions authorized for the taxpayer as of July 1, 1975, by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)]; or

(2) his gross income for the taxable year, if married and living with husband or wife, exceeds the combined amount of the personal exemptions authorized for the taxpayer and the spouse of the taxpayer as of July 1, 1975, by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)]; or

(3) his gross sales or gross receipts from any trade or business other than an unincorporated business subject to tax under sections 47-1574 to 1574e, exceeds \$5,000, regardless of the amount of his gross income; or

(4) the combined gross income for the taxable year of a husband and wife living together exceeds the combined amount of the personal exemptions authorized as of July 1, 1975, for the taxpayer and the spouse of the taxpayer by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)], or the combined gross sales or gross receipts from any trade or business, other than an unincorporated business subject to tax under sections 47-1574 to 47-1574e, exceeds \$5,000, regardless of the amount of their gross income.

(b) *Fiduciaries*.—Every fiduciary (except a receiver appointed by authority of law in possession of only part of the property of an individual) for—

(1) every individual if single, or if married and not living with husband or wife, for whom he acts having a gross income for the taxable year in excess of the amount of his personal exemption as authorized for the taxpayer as of July 1, 1975, by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)];

(2) every individual, if married and living with husband or wife, for whom he acts having a gross income for the taxable year in excess of their personal exemptions as authorized for the taxpayer as of July 1, 1975, by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)];

(3) every estate for which he acts, the gross income of which for the taxable year is in excess of its personal exemption, which is equivalent to the personal exemption authorized for an individual as of July 1, 1975, by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151(b)]; or

(4) every trust for which he acts, the gross income of which for the taxable year is \$100 or over.

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(7), 22 DCR 2107.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended pars. (a) and (b) generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-1564b.

§ 47-1564b. Filing of returns.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1586f, 47-1586l-1.

§ 47-1564c. Divulging of information.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-1586g.

TITLE VI.—TAX ON RESIDENTS AND NONRESIDENTS

§ 47-1567a. Personal exemptions.

(a) (1) There shall be allowed to residents the same deductions for personal exemptions as are allowed as of July 1, 1975, under section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151].

(2) A taxpayer who qualifies as head of a family shall be allowed a personal exemption in an amount which is twice the amount allowed the taxpayers as of July 1, 1975, by subsection (b) of section 151 of the Internal Revenue Code of 1954 [26 U.S.C. 151 (b)].

(b) In the case of a return made for a fractional part of a taxable year, the personal exemptions shall be reduced to amounts which bear the same ratio to the full exemptions provided as the number of months in the period for which the return is made bears to twelve months. (July 16, 1947, 61 Stat. 343, ch. 258, Art. I, title VI, § 2; May 27, 1949, 63 Stat. 132, ch. 146, title IV, § 412; Mar. 31, 1956, 70 Stat. 70, ch. 154, § 6; Sept. 4, 1957, 71 Stat. 605, Pub. L. 85-281, § 2; Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(8), 22 DCR 2109.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1567, 47-1574e, 47-1577b, 47-1577d.

§ 47-1567b. Imposition and rates of tax—Optional method of computation.

(b) In lieu of the method of computation prescribed by subsection (a), a resident reporting on a cash basis for any full calendar year who does not claim credit for taxes paid by him to any State or Territory of the United States or political subdivision thereof under the provisions of section 47-1567d on the whole or any part of his income for such

calendar year and, if his gross income for such calendar year is \$5,000 or less, and is derived solely from salaries, wages, dividends, and interest, may elect to pay the tax in accordance with a table to be included in regulations of the Council of the District of Columbia.

(1) In applying such table the taxpayer's marital status on the last day of the taxable year shall control.

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(9), 22 DCR 2110.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended subsec. (b) (1) generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-1567e. Repealed. Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(10), 22 DCR 2110.

Section, act July 16, 1947, ch. 258, Art. I, title VI, § 6, as added Oct. 31, 1969, Pub. L. 91-106, title VI, § 605(a), 83 Stat. 179, provided a tax credit to certain low-income residents for sales tax paid on purchases of groceries.

EFFECTIVE DATE OF REPEAL

See sec. 801(d) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

§ 47-1567f. Credit for campaign contributions.

(a) For the purpose of encouraging residents of the District to participate in the election process in the District, there shall be allowed to an individual a credit against the tax (if any) imposed by this subchapter in an amount equal to 50 per centum of any campaign contribution made to any candidate for election to any office referred to in section 1-1101, but in no event shall such credit exceed the amount of \$12.50, or \$25 in the case of married persons filing a joint return.

(b) (1) A husband and wife filing separate returns for a taxable year for which a joint return could have been made by them may claim between them only the total credit (or refund) to which they would have been entitled under this section had a joint return been filed.

(2) No individual for whom a personal exemption was allowed on another individual's return shall be entitled to a credit (or refund) under this section. (July 16, 1947, ch. 258, Art. I, title VI, § 7, as added Aug. 14, 1974, Pub. L. 93-376, title VII, § 702(a), 88 Stat. 470.)

EFFECTIVE DATE

Section effective Aug. 14, 1974, see section 705(b) of the Act Aug. 14, 1974, Pub. L. 93-376, set out as a note under § 1-1121.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1574e, 47-1577b.

§ 47-1567g. Credit for property taxes accrued and payable by District of Columbia residents.

(a) (1) For purposes of providing relief to certain District of Columbia residents who own or rent their principal place of abode and who reside in same, a credit shall be allowed to the eligible claimant equal to the amount by which all or a portion of real property taxes the taxpayer pays, or rent paid constituting property taxes, on his principal place of residence for the taxable year, exceeds a percentage (determined under subsection (a) (2)) of his household gross income for that year.

(2) The percentage required under paragraph (1) of this subsection to be determined under this subsection for taxpayers shall be the percentage specified in the following table:

If household gross income is:	The percentage of property tax paid on the first \$400 of property tax, or rent constituting property tax, which shall constitute credit is:
Under \$3,000-----	80 per centum of tax in excess of 2 per centum of income.
\$3,000 to \$4,999-----	70 per centum of tax in excess of 3 per centum of income.
\$5,000 to \$6,999-----	60 per centum of tax in excess of 4 per centum of income.

(b) For purposes of this section:

(1) (A) The term "household gross income" means gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, including salaries, wages, and compensation paid by the United States to its officers and employees, or income derived from any trade or business or sales or dealings in property whether real or personal, including capital assets as defined in this subchapter growing out of the ownership or sale of or interest in such property; income from rent, royalties, interest, dividends, securities, of transactions of any trade or business carried on for gain or profit, or gains or profits and income derived from any source whatever, including but not limited to alimony, and separate maintenance payments (including amounts received under separate maintenance agreements), strike benefits, cash public assistance and relief (not including relief or credit granted under this section), sick pay, workmen's compensation, proceeds of life insurance policies, the gross amount of any pension or annuity (including railroad retirement benefits, veterans' disability pensions, or payment received under the Federal Social Security Act [42 U.S.C. 301 et seq.]), State or District of Columbia unemployment compensation laws, and nontaxable interest received from the United States, a State or any agency or instrumentality thereof. The word "income" does not include gifts from nongovernmental sources, food stamps, or food or other relief in kind supplied by a governmental agency.

(B) In determining household gross income the exclusions from gross income as provided by subsection (b) of section 47-1557a shall not apply.

(2) The term "household income" shall have the same meaning as the words "adjusted gross income" are defined in subsection (c) of section 47-1557a. For

purposes of determining adjusted gross income within the meaning of this section, gross income shall mean household income as defined in this section.

(3) The term "home" means the claimant's dwelling house, whether owned or rented by the claimant, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, and may include a multiunit building or a multipurpose building and a part of the land upon which it is located.

(4) The term "claimant" means a person who has filed a claim under this section, was an owner of record of a home in the District, or a lessee, tenant at will or tenant at sufferance paying rent on a home in the District, during the entire calendar year preceding the year in which he files a claim for relief under this section. Only one claimant per home and per household per year shall be entitled to relief under this section.

(5) (A)¹ The term "rent constituting property taxes accrued" means 15 per centum of the rent actually paid by a claimant in cash or its equivalent in the calendar year 1975 or any subsequent calendar year solely for the right to occupy his District home in such calendar year, and which rent constitutes the basis in the succeeding calendar year for the claim for relief made by the claimant under this section, exclusive of amounts which are paid as rent or other consideration for the providing by the landlord of furniture or furnishings of any kind, and exclusive of amounts included in the rent for utilities. Whenever the amount of rent includes charges for the providing by the landlord of furniture or furnishings or charges for utilities, and the charges therefor are not separately stated, then there shall be deducted from the rent as the charge for such furniture or furnishings 20 per centum of the rent, and for utilities 10 per centum of the rent, and the balance shall be deemed to be the amount paid by the claimant solely for the right to occupy his District home for the purposes of the credit allowed under this section.

(C) In the event that any installment of rent for a calendar year for which a claim is filed is paid prior to the beginning of or subsequent to the end of such calendar year, it shall be included as rent for the year for which the claim was made and for no other year, and shall not be included as rent for purposes of this section for the year in which the installment was paid.

(d) If the Mayor determines that the rent paid was not the result of an agreement entered into at arm's length between the tenant and his landlord, the Mayor may adjust the rent to a reasonable amount for the purposes of this section.

(e) (1) Beginning with the calendar year 1975 and for each succeeding calendar year, if a claimant owns and occupies his home in the District on July 1 of any such year, "property taxes accrued" means property taxes (exclusive of special assessments, interest on a delinquency in payment of tax, and any penalties and service charges) assessed and paid to date against such home commencing January 1, 1975, and for succeeding years. If a home is an integral part of a larger unit such as a multipurpose build-

¹ So in original. There is no subsec. (5) (B).

ing or a multidwelling building, property taxes accrued shall be that percentage of the total property taxes accrued as the value of the home bears to the total value of the property.

(2) When a claimant rents two or more different homes in the District in the same calendar year, rent paid by the claimant during that year shall be determined by dividing the rent paid pursuant to the last rental agreement in force during that calendar year by the number of months during that calendar year for which this rent was paid and multiplying the result by twelve.

(f) The right to file under this section shall be personal to the claimant, but such right may be exercised by his legal guardian or attorney-in-fact. The right to file a claim shall not survive the death of a claimant. If a claimant dies after having filed a claim, any amount refunded as a result thereof shall be disbursed to his estate: *Provided*, That if no executor or administrator qualifies therein within two years of the filing of the claim, or no petition for distribution of a small estate is filed pursuant to sections 20-2101 and 20-2102, the claim shall not be allowed.

(g) Subject to the limitations provided in this section, commencing with the taxable year beginning after December 31, 1974, and for succeeding taxable years, the claimant may claim as a credit against the District income taxes otherwise due on his income, property taxes accrued or rent constituting property taxes accrued for that year. If the allowable amount of such claim exceeds the income taxes otherwise due from the claimant, or other tax liabilities of the claimant to the District, or if there are no District income taxes due from the claimant, the amount of the claim not used as an offset against income taxes or other tax liabilities of the claimant to the District shall be paid or credited to the claimant. No interest shall be allowed on any payment made to a claimant pursuant to this section.

(h) No claim with respect to property taxes accrued or with respect to rent constituting property taxes accrued shall be allowed unless a District of Columbia individual income tax return or (if the claimant is not required to file such return) a claim for credit under this section is filed with the District on the forms and in such manner and with such information as the Mayor may prescribe. Any claim for credit shall be filed on or before the time prescribed for the filing of a return of individual income under this article. The Mayor may grant a reasonable extension of time, not to exceed six months, for the filing of a return or claim for credit under this section whenever in his judgment good cause exists therefor.

(i) The amount of any claim otherwise payable under this section may be applied by the District against any outstanding tax liability of the claimant to the District.

(j) (1) In determining eligibility for the credit allowable under this section, and for the purpose of determining outstanding tax liability (if any) of the claimant to the District household income for which the claim is filed and the claimant's outstanding tax liability (if any) shall be determined on the basis of the combined household income of all mem-

bers present in the household, except there shall be excluded from the computation of gross household income the first \$1,000 earned by a dependent.

(2) In the case of husband and wife, who during the entire calendar year for which a claim is filed under this section, maintains separate homes, for the purpose of determining household income and the claimant's outstanding tax liability (if any), such husband and wife shall be deemed to have been unmarried during the calendar year for which the claim is made.

(k) No credit shall be allowed under this title for any year during which the person claiming the credit was a dependent, under any State, Federal, or District law levying a tax on income, unless during that year such person is or becomes sixty-five years of age or older.

(l) In the case of persons whose incomes vary substantially from year to year, the Council of the District of Columbia shall adopt regulations concerning income averaging for purposes of calculating benefits.

(m) Each owner of a rental unit or his authorized agent shall, when requested in writing, furnish to the tenant making such written request a statement indicating the amount of rent paid by the tenant during the calendar year solely for the right of occupancy of the leased premises. Requests shall be made under this paragraph only by those persons entitled to file a claim under this section or who at the time of the making of the request deem themselves entitled to file a claim for credit under this section.

(n) (1) If, on an audit of any claim filed under this section, the Mayor finds the amount to have been incorrectly computed, he shall determine the correct amount and notify the claimant in accordance with the procedures set forth in section 47-1586d.

(2) If it is determined that a claim was filed with fraudulent intent, it shall be disallowed in full. If the claim has been paid or a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount paid shall be assessed against the claimant and recovered in the same manner as provided for the collection of taxes under section 47-312.

(o) No claim for relief under this section shall be allowed to any person who was not living in a home which was subject to District of Columbia real property taxation during the calendar year for which the claim is filed.

(p) Notwithstanding any other provision of law to the contrary, any person aggrieved by the denial in whole or in part of a claim for the credit authorized by this section, or an assessment of tax made pursuant to subsection (n) (1) of this section, may appeal the denial within six months after notice of the denial of the claim or within six months after notice of assessment, to the Board which shall consider such appeal as a contested case under section 1-1509. In the case of an assessment of tax, the mailing to the claimant of a statement of taxes due shall be considered notice of assessment with respect to such taxes.

(q) The Mayor is authorized to provide a table which will approximate, as closely as feasible, the amount of relief allowable under this section.

(r) If it is determined by the District that a claimant received title to his home in the District or became legally obligated to pay rent for his home in the District primarily for the purpose of receiving benefits under the provisions of this section, his claim shall be disallowed.

(s) The Council of the District of Columbia is empowered to make such changes in the amount of annual relief provided under subsection (a) of this section as it may deem proper. (July 16, 1947, ch. 258, Art. I, title VI, § 8, formerly § 7, as added Sept. 3, 1974, Pub. L. 93-407, title IV, § 451, 88 Stat. 1060; renumbered and amended Jan. 3, 1975, Pub. L. 93-635, § 7 (a) (1), (b) (1), (c)-(e), 88 Stat. 2176.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Section was enacted by title IV of Act Sept. 3, 1974, Pub. L. 93-407, and is therefore subject to the definitions and regulations provisions of such title IV, as set out in §§ 47-622 and 47-661.

AMENDMENTS

1975—Section 7(a) (1) of Act Jan. 3, 1975, Pub. L. 93-635, made technical amendments to the source statute (sec. 451 of Pub. L. 93-407) without making change in the text of the section. Section 7(a) (2) of such Act made these amendments effective on and after Sept. 3, 1974.

Section 7(b) (1) of such Act renumbered section 7 of the 1947 Act as section "(8)". Section 7(b) (3) of such Act made this amendment effective on and after Jan. 1, 1975.

Section 7(c) of such Act amended subsec. (f) by striking out "the first section of the Act of September 14, 1965 (D.C. Code, secs. 20-2101 and 20-2102)" and inserting in lieu thereof "sections 20-2101 and 20-2102".

Section 7(d) of such Act amended subsec. (p) by striking out "paragraph (1)" and inserting in lieu thereof "subsection (n) (1)".

Section 7(e) of such Act amended subsec. (s) by striking out "section 7(a) of this title" and inserting in lieu thereof "subsection (a) of this section".

EFFECTIVE DATE

Section 451 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that this section is effective Jan. 1, 1975.

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 7(f) of Act Jan. 3, 1975, Pub. L. 93-635, provided: "The amendments [to subsecs. (f), (p), and (s)] made by subsections (c), (d), and (e) shall take effect as provided in section 451 of that Act [Public Law 93-407] as if the sections (as amended) amended by such subsections had been included in Public Law 93-407 on the date of its enactment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1574e, 47-1577b.

TITLE VII.—TAX ON CORPORATIONS

§ 47-1571. Taxable income defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1574, 47-1589.

§ 47-1571a. Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiv-

ing income from sources within the District, there is hereby levied for one taxable year beginning on and after January 1, 1975, a tax at the rate of 12 per centum upon the taxable income of every corporation, whether domestic or foreign (except those expressly exempt under section 47-1554). The minimum tax payable shall be \$25.00. For the taxable years beginning on and after January, 1976, there is hereby levied a tax at the rate of 9 per centum upon the taxable income of every corporation, whether domestic or foreign (except those expressly exempt under section 47-1554). The minimum tax payable shall be \$25.00. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, title VII, § 2; Aug. 2, 1968, Pub. L. 90-450, title II, § 202(a), 82 Stat. 612; Oct. 31, 1969, Pub. L. 91-106, title VI, § 604(a) (1), 83 Stat. 178; Dec. 15, 1971, Pub. L. 92-196, title IV, §§ 401, 403, 85 Stat. 653, 654; Oct. 21, 1975, D.C. Law 1-23, title VI, § 603, 22 DCR 2111.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(g) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1574, 47-1589.

TITLE VIII.—TAX ON UNINCORPORATED BUSINESSES

§ 47-1574. Definition of unincorporated business.

For the purposes of this subchapter (not alone of this title) and unless otherwise required by the context, the words "unincorporated business" means any trade or business, conducted or engaged in by any individual, whether resident or nonresident, statutory or common-law trust, estate, partnership, or limited or special partnership, society, association, executor, administrator, receiver, trustee, liquidator, conservator, committee assignee, or by any other entity or fiduciary, other than a trade or business conducted or engaged in by any corporation; and include any trade or business which if conducted or engaged in by a corporation would be taxable under sections 47-1571 and 47-1571a. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, title VIII, § 1; Dec. 10, 1971, Pub. L. 92-180, title VI, 85 Stat. 582; Oct. 21, 1975, D.C. Law 1-23, title VI, § 605, 22 DCR 2113.)

REFERENCE IN TEXT

The words "this title", referred to in the first sentence, refer to sections 47-1574 to 47-1574e.

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, struck out the last sentence which read: "The words 'unincorporated business' do not include any trade or business which by law, customs or ethics cannot be incorporated, any trade, business, or profession which can be incorporated only under the District of Columbia Professional Corporation Act, or any trade or business in which more than 80 per centum of the gross income is derived from the personal services actually rendered by the individual or members of the partnership or other entity in the conducting or carrying on of any trade or business and in which capital is not a material income-producing factor."

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(g) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1557a, 47-1557b, 47-1564a, 47-1567, 47-1567d, 47-1589, 47-1591.

§ 47-1574a. Taxable income defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1557a, 47-1557b, 47-1564a, 47-1567, 47-1567d, 47-1589.

§ 47-1574b. Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied for one taxable year beginning on and after January 1, 1975, a tax at the rate of 12 per centum upon the taxable income of every unincorporated business, whether domestic or foreign (except those expressly exempt under section 47-1554). The minimum tax payable shall be \$25.00. For the taxable years beginning on and after January 1, 1976, there is hereby levied a tax at the rate of 9 per centum upon the taxable income of every unincorporated business, whether domestic or foreign (except those expressly exempt under section 47-1554). The minimum tax payable shall be \$25.00. (July 16, 1947, 61 Stat. 346, Art. I, title VIII, § 3; Aug. 2, 1968, Pub. L. 90-450, title II, § 202(b), 82 Stat. 612; Oct. 31, 1969, Pub. L. 91-106, title VI, § 604(a) (2), 83 Stat. 179; Dec. 15, 1971, Pub. L. 92-196, title IV, §§ 402, 404, 85 Stat. 654; Oct. 21, 1975, D.C. Law 1-23, title VI, § 604, 22 DCR 2112.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(g) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1551c.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1557a, 47-1557b, 47-1564a, 47-1567, 47-1567d, 47-1574c, 47-1574d, 47-1589.

§ 47-1574c. Exemption.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1557a, 47-1557b, 47-1564a, 47-1567, 47-1567d, 47-1574a, 47-1589.

§ 47-1574d. By whom payable.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1557a, 47-1557b, 47-1564a, 47-1567, 47-1567d, 47-1589.

§ 47-1574e. Partners only taxable.

Individuals carrying on any trade or business in partnership in the District, other than an unincorporated business, shall be liable for income tax only in their individual capacities. The tax on all such income shall be assessed against the individual partners under sections 47-1567 to 47-1567g. There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year; or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the partnership is computed, then his distributive share of the net income of the partnership for any

accounting period of the partnership ending within the taxable year upon the basis of which the partner's net income is computed. (July 16, 1947, 61 Stat. 346, ch. 258, Art. I, title VIII, § 6.)

CODIFICATION

Section is set out in this supplement to correct translations therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1557a, 47-1557b, 47-1564a, 47-1567, 47-1567d, 47-1589.

TITLE IX.—TAX ON ESTATES AND TRUSTS

§ 47-1577b. Imposition of tax.

The taxes imposed by sections 47-1567 to 47-1567g upon residents shall apply to the income of resident estates, and income from any kind of property held in resident trusts, including—

(a) income accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(b) income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of any infant or incompetent person which is to be held or distributed as the court may direct;

(c) income received by estates of deceased persons during the period of administration or settlement of the estate; and

(d) income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated. (July 16, 1947, 61 Stat. 347, ch. 258, Art. I, title IX, § 3.)

CODIFICATION

Section is set out in this supplement to correct translations therein.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

TITLE X.—PURPOSE OF SUBCHAPTER AND ALLOCATION AND APPORTIONMENT

§ 47-1580. Purpose of subchapter.

It is the purpose of this subchapter to impose (1) an income tax upon the entire net income of every resident and every resident estate and trust, and (2) a franchise tax upon every corporation and unincorporated business for the privilege of carrying on or engaging in any trade or business within the District and of receiving such other income as is derived from sources within the District: *Provided, however*, That, in the case of any corporation, the amount received as dividends from a corporation which is subject to taxation under this subchapter or under chapter 18 of this title, and, in the case of a corporation not engaged in carrying on any trade or business within the District, interest received by it from a corporation which is subject to taxation under this subchapter or under chapter 18 of this title shall not be considered as income from sources within the District for purposes of this subchapter; and in the case of any corporation organized as a bank holding company under the provisions of the Bank Holding Company Act of 1956 and the Bank Holding Company Act Amendments of 1970, the amount received

as dividends from a corporation which is subject to taxation under this subchapter or under the provisions of sections 47-1701 and 47-1703, and in the case of any such bank holding company not engaged in carrying on any trade or business within the District, interest received by it from a corporation which is subject to taxation under such sections, shall not be considered as income from sources within the District for purposes of this subchapter. *Provided further*, That income derived from the sale of tangible personal property by a corporation or unincorporated business not carrying on or engaging in trade or business within the District as defined in sections 47-1551 to 47-1551c shall not be considered as income from sources within the District for purposes of this subchapter, with the exception of income from sale to the United States not excluded from gross income as provided in section 47-1557a(b)(13). (July 16, 1947, 61 Stat. 349, ch. 258, Art. I, title X, § 1; May 3, 1948, 62 Stat. 207, ch. 246, § 2; Apr. 17, 1974, Pub. L. 93-268, § 1, 88 Stat. 85.)

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in text, is classified to chapter 17 (§ 1841 et seq.) of title 12, and sections 1101 to 1103 of title 26, U.S. Code.

The Bank Holding Company Act Amendments of 1970 are classified principally to chapter 17 (§ 1841 et seq.) and chapter 22 (§ 1971 et seq.) of title 12, U.S. Code.

AMENDMENT

1974—Act Apr. 17, 1974, Pub. L. 93-268, amended the first proviso generally. Prior to amendment, the proviso read: "*Provided, however*, That, in the case of any corporation, the amount received as dividends from a corporation which is subject to taxation under this subchapter, and, in the case of a corporation not engaged in carrying on any trade or business within the District, interest received by it from a corporation which is subject to taxation under this subchapter shall not be considered as income from sources within the District for the purposes of this subchapter. The measure of the franchise tax shall be that portion of the net income of the corporation and unincorporated business as is fairly attributable to any trade or business carried on or engaged in within the District and such other net income as is derived from sources within the District;".

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2 of act Apr. 17, 1974, Pub. L. 93-268, provided: "The amendment made by the first section of this Act shall apply with respect to all taxable years ending after December 31, 1973."

§ 47-1580a. Allocation and apportionment.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE XII.—ASSESSMENT AND COLLECTION; TIME OF PAYMENT

§ 47-1586d. Determination and assessment of deficiency.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-1567g, 47-1586f, 47-1586i, 47-1593.

§ 47-1586f. Payment of tax.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1586g. Withholding of tax.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1586j. Refunds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1586k. Closing agreements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1586l. Compromises.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1586l-1. Declarations of estimated tax by corporations and unincorporated businesses—Failure by corporation or unincorporated business to pay estimated tax—Overpayment; credit of tax.

* * * * *

(b) *Failure by corporation or unincorporated business to pay estimated tax.*—(1) *Addition to the tax.*—In case of any underpayment of estimated tax by a corporation or an unincorporated business, there shall be added to the tax for the taxable year an amount determined at the rate of 9 per centum per annum upon the amount of the underpayment (determined under paragraph (2)) for the period of the underpayment (determined under paragraph (3)).

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title VI, § 608, 22 DCR 2114.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended subsec. (b) (1) by striking out the figure "6" and inserting "9" in lieu thereof.

EFFECTIVE DATE OF 1975 AMENDMENT

Sec. 801(h) of act Oct. 21, 1975, D.C. Law 1-23, provided "Sections 606, 607, and 608 [amending §§ 47-1586l-1, 47-1589, 47-1589a, 47-1589c, 47-1589d] shall take effect on January 1, 1976."

TITLE XIII.—PENALTIES AND INTEREST

§ 47-1589. Failure to file return.

(a) *Failure to file return.*—In case of any failure to make and file a return required by this subchapter, within the time prescribed by law or prescribed by the Mayor or Council or Assessor in pursuance of law, 5 per centum of the tax shall be added to the tax for each month or fraction thereof that such failure continues, not to exceed 25 per centum in the aggregate, except that when a return is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to willful neglect, no such addition shall be made to the tax. With respect to declarations of estimated tax, for the purposes of this subsection, the amount and due date of each installment shall be the same as if a declaration had been filed within the time prescribed showing an estimated tax equal to the correct tax reduced by the amount of credit for tax withheld.

(b) *Failure to pay.*—In the case of any failure to pay the amount of tax required by sections 47-1571, 47-1571a, and 47-1574 to 47-1574e within the time prescribed by law or prescribed by the Mayor or Council in pursuance of law, 5 per centum of the tax shall be added to the tax for each month or fraction thereof that such failure continues, not to exceed 25 per centum in the aggregate except that when the tax is paid after such time and it is shown that the failure to pay was due to reasonable cause and not due to willful neglect, no such addition shall be made to the tax.

(c) *Failure to file employer's return.*—In the case of any employer—

(1) who pursuant to this subchapter is required to withhold taxes on wages, make a return of such taxes, and pay to the District the taxes required to be withheld pursuant to this subchapter, and

(2) who fails to withhold such taxes, make such return, or pay to the District the taxes required to be withheld pursuant to this subchapter, there shall be imposed on such employer a civil penalty (in addition to any criminal penalty provided for in this subchapter) of 5 per centum of the amount required to be shown as tax on such return if the failure is for not more than one month, with an additional 5 per centum for each additional month or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate.

(d) *Underestimate of tax by residents.*—If 80 per centum of the tax, determined without regard to the amount of credit for tax withheld, exceeds the estimated tax, increased by such credit, there shall be added to the tax an amount equal to such excess, or equal to 9 per centum of the amount by which such tax so determined exceeds the estimated tax so increased, whichever is the lesser. This subsection shall not apply to the taxable year in which falls the death of the taxpayer, nor shall it apply to the taxable year in which the taxpayer makes a timely payment on April 15, July 15, and October 15, of such year, and January 15 of the succeeding year, and the total of all such payments is an amount at least as great as though computed on the basis of the

facts shown on his return for the preceding taxable year.

(e) *Collection of penalties added to tax.*—The amount added to any tax under this section shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be assessed and collected. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, title XIII, § 1; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 13; Aug. 2, 1968, Pub. L. 90-450, title II, § 203(b), 82 Stat. 612; Oct. 21, 1975, D.C. Law 1-23, title VI, § 607, 22 DCR 2113.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENTS

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section as follows:

(1) Redesignated subsecs. (b), (c), and (d) as “(c)”, “(d)”, and “(e)”, respectively.

(2) In redesignated subsec. (d), struck the figure “6” and inserted “9” in lieu thereof.

(3) Added a new subsec. (b).

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(h) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1586f-1.

§ 47-1589a. Interest on deficiencies.

(a) *Assessment and collection.*—Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency, shall be paid upon notice and demand from the Collector, and shall be collected as a part of the tax, at the rate of three-fourths of 1 per centum per month or portion of a month from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed.

(b) *If extension granted for payment of deficiency.*—If the time for payment of any part of a deficiency is extended, there shall be collected, as a part of the tax, interest on the part of the deficiency the time for payment of which is so extended at the rate of three-fourths of 1 per centum per month or portion of a month for the period of the extension. If a part of the deficiency the time for payment of which is so extended is not paid in full, together with all penalties and interest due thereon, prior to the expiration of the period of the extension, then interest at the rate of three-fourths of 1 per centum per month or portion of a month shall be added and collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, title XIII, § 2; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 14; Oct. 21, 1975, D.C. Law 1-23, title VI, § 606, 22 DCR 2113.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, struck out the words “one-half of 1 per centum” wherever they appeared and inserted “three-fourths of 1 per centum” in lieu thereof.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(h) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1586l-1.

§ 47-1589c. Additions to the tax in case of nonpayment.

(a) *Tax shown on return.*

(1) *General rule.*—Where the amount determined by the taxpayer as the tax imposed by this subchapter, or any installment thereof, or any part of such amount or installment, is not paid on or before the date prescribed for its payment, there shall be collected as a part of the tax interest upon such unpaid amount at the rate of three-fourths of 1 per centum per month or portion of a month from the date prescribed for its payment until it is paid.

(2) *If extension granted.*—Where an extension of time for payment of the amount so determined as the tax by the taxpayer, or any installment thereof, has been granted, and the amount the time for payment of which has been extended, and the interest thereon determined under section 47-1589d is not paid in full prior to the expiration of the period of the extension, then, in lieu of the interest provided for in subsection (a)(1) of this section, interest at the rate of three-fourths of 1 per centum per month or portion of a month shall be collected on such unpaid amount from the date of the expiration of the period of the extension until it is paid.

(b) *Deficiency.*—Where a deficiency, or any interest or additional amounts assessed in connection therewith under section 47-1589a or under section 47-1589b, or any addition to the tax in case of delinquency provided for in section 47-1589 is not paid in full within ten days from the date of assessment thereof, there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of three-fourths of 1 per centum per month or portion of a month from the date of such notice and demand until it is paid. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, title XIII, § 4; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 14; Oct. 21, 1975, D.C. Law 1-23, title VI, § 606, 22 DCR 2113.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, struck out the words “one-half of 1 per centum” wherever they appeared and inserted “three-fourths of 1 per centum” in lieu thereof.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(h) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1586l-1.

§ 47-1589d. Time extended for payment of tax shown on return.

If the time for payment of the amount determined as the tax by the taxpayer, or any installment thereof, is extended under the authority of section 47-1586f(b), there shall be collected, as a part of such amount, interest thereon at the rate of three-fourths of 1 per centum per month or portion of a month from the date when such payment should have been made if no extension had been granted, until the expiration of the period of the extension. (July 16, 1947, 61 Stat. 357, ch. 258, Art. I, title XIII, § 5; Mar. 31, 1956, 70 Stat. 79, ch. 154, § 14; Oct. 21, 1975, D.C. Law 1-23, title VI, § 606, 22 DCR 2113.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, struck out the words “one-half of 1 per centum” and inserted “three-fourths of 1 per centum” in lieu thereof.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(h) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1586l-1.

TITLE XIV.—LICENSES

§ 47-1591d. Revocation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1591e. Renewal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE XV.—APPEAL

§ 47-1593. Appeal to Superior Court of the District of Columbia.

NOTES TO DECISIONS

Construction

Where statutory period for challenging excessive tax payment had expired before sections of Court Reorganization Act of 1970 putatively eliminating common-law remedies became effective, the Act could not be construed to curtail or destroy the preexisting common-law rights of property owners to maintain an action at common law for recovery from the District of Columbia. *E. P. Block et al. v. District of Columbia* (1974, 492 F. 2d 646, 160 U.S. App. D.C. 380).

Evidence—Admissibility

Where taxpayer's business records were admissible under Federal Shop Book Act (28 U.S.C. 1732), and taxpayer alleged that such records were essential in judicial proceeding seeking redetermination of franchise tax deficiency, failure to admit such records at trial is reversible error despite trial court's posttrial admission of records for purpose of determining final order which dealt with dollar amount of tax deficiency. *Petworth Pharmacy, Inc. v. District of Columbia* (D.C. App. 1975, 335 A.2d 256).

TITLE XVI.—RULES AND REGULATIONS

§ 47-1595. District of Columbia Council to prescribe and publish rules.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-1595a. District of Columbia Council authorized to make rules and regulations in regard to District of Columbia Revenue Act of 1956.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established

by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 16.—INHERITANCE AND ESTATE TAXES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47-504.

ARTICLE I—INHERITANCE TAX

§ 47-1601. Imposition of tax.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

NOTES TO DECISIONS

Jointly owned property

Where sister and brother, as partners, owned realty and savings accounts as joint tenants, all of the four unities of joint tenancy were present, record showed no evidence that any partnership creditors' claims were not met by partnership assets which were not held in joint tenancy there was no indication that partners did not understand and intend survivorship consequences of joint tenancy, and there was no evidence that they at any time intended to sever joint tenancy, such partnership assets became sister's by right of survivorship on brother's death and are subject to District of Columbia inheritance tax as part of sister's estate. *District of Columbia v. The Riggs National Bank of Washington, D.C., Executor etc.* (D.C. App. 1975, 335 A.2d 238).

District of Columbia regulation precluding, in computing inheritance tax, deduction from value of jointly held property, passing by right of survivorship, any funeral, administration or other expenses and debts of decedent, is to be considered in juxtaposition with, and is consistent with, statute providing that deduction will be allowed only when claim therefor can be enforced against jointly owned property and the regulation does not conflict with statute imposing inheritance tax. *C. A. Hankin v. District of Columbia* (D.C. App. 1973, 310 A.2d 56).

Inasmuch as no claims, excepting prior liens, can be enforced against a decedent's former interest in jointly owned property, regulation precluding allowing deductions against such property in computing inheritance taxes is reasonable and constitutional classification. *Id.*

Taxpayer who filed joint income tax return with her husband had individual obligation to pay all income taxes involved so that payment of such taxes was a payment of personal obligation and was not deductible from joint assets which became solely hers on her husband's death, for purposes of computing D.C. inheritance tax. *Id.*

Where husband and wife created inter vivos trust agreement whereby they contemplated ultimate contribution to student aid fund of \$150,000 to be conveyed to university on basis of 30% of total income in one year, upon acceptance of offer by university, and similar contribution annually during life of surviving donor, with remainder upon death of survivor, the university could not validly have claimed prior lien against joint property upon death of husband and therefore wife was not entitled to deduct the amount she paid to fund upon death of husband from one-half of joint assets, in computing inheritance tax. *Id.*

Survivor annuity

Neither portion of survivor annuity unpaid on death of retired decedent and attributable to contributions to Federal Civil Service Retirement Fund by decedent, who had to make contributions as condition of government employment and whose annuity was reduced by statute so as to provide survivor benefits for spouse if she survived because decedent did not elect to receive a larger annuity without survivor benefits, nor portion attributable to federal contributions is subject to inheritance taxation, in that decedent did not die "seized or possessed" of the unpaid survivor annuity. *District of Columbia v. C. K. Von Schrader* (D.C. App. 1975, 345 A.2d 475).

§ 47-1602. Tax based on market value—Appraisal.

NOTES TO DECISIONS

Jointly owned property

Where sister and brother, as partners, owned realty and savings accounts as joint tenants, all of the four unities of joint tenancy were present, record showed no evidence that any partnership creditors' claims were not met by partnership assets which were not held in joint tenancy, there was no indication that partners did not understand and intend survivorship consequences of joint tenancy, and there was no evidence that they at any time intended to sever joint tenancy, such partnership assets became sister's by right of survivorship on brother's death and are subject to District of Columbia inheritance tax as part of sister's estate. *District of Columbia v. The Riggs National Bank of Washington, D.C., Executor etc.* (D.C. App. 1975, 335 A.2d 238).

District of Columbia regulation precluding, in computing inheritance tax, deduction from value of jointly held property, passing by right of survivorship, any funeral, administration or other expenses and debts of decedent, is to be considered in juxtaposition with, and is consistent with, statute providing that deduction will be allowed only when claim therefor can be enforced against jointly owned property and the regulation does not conflict with statute imposing inheritance tax. *C. A. Hankin v. District of Columbia* (D.C. App. 1973, 310 A.2d 56).

Inasmuch as no claims, excepting prior liens, can be enforced against a decedent's former interest in jointly owned property, regulation precluding allowing deductions against such property in computing inheritance taxes is reasonable and constitutional classification. *Id.*

Taxpayer who filed joint income tax return with her husband had individual obligation to pay all income taxes involved so that payment of such taxes was a payment of personal obligation and was not deductible from joint assets which became solely hers on her husband's death, for purposes of computing D.C. inheritance tax. *Id.*

Where husband and wife created inter vivos trust agreement whereby they contemplated ultimate contribution to student aid fund of \$150,000 to be conveyed to university on basis of 30% of total income in one year, upon acceptance of offer by university, and similar contribution annually during life of surviving donor, with remainder upon death of survivor, the university could not validly have claimed prior lien against joint property upon death of husband and therefore wife was not entitled to deduct the amount she paid to fund upon death of husband from one-half of joint assets, in computing inheritance tax. *Id.*

§ 47-1607. Life and future estates—Payment of tax—Lien.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

ARTICLE II—ESTATE TAX

§ 47-1608. Imposition of tax—Additional levy on transfers.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

ARTICLE III—GENERAL

§ 47-1618. Administration — Rules — Testimony—Production of books and records.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the

District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1620. Enforcement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1621. Failure to file return—False return—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1623. Release of lien.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1625. Bureau of Internal Revenue to supply information to Commissioner.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1628. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1630. Compromise and settlement of taxes.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 17.—FINANCIAL INSTITUTION, GUARANTY COMPANY, AND PUBLIC UTILITY TAXES

Sec.

47-1711. Declaration and payment of estimated tax

§ 47-1701. Banks, gas, electric-lighting, and telephone companies.

Each national bank as the trustee for its stockholders, through its president or cashier, and all other incorporated banks and trust companies in

the District of Columbia, through their presidents or cashiers, and all gas, electric lighting, and telephone companies, through their proper officers, shall make affidavit to the board of personal-tax appraisers on or before the 1st day of August each year as to the amount of its or their gross earnings or gross receipts, as the case may be, for the preceding year ending the 30th day of June, and each national bank and all other incorporated banks and trust companies respectively shall pay to the collector of taxes of the District of Columbia per annum 6 percent on such gross earnings and each gas company, electric lighting company, and telephone company shall pay to the collector of taxes of the District of Columbia per annum 6 per centum on such gross receipts, from the sale of public utility commodities and services within the District of Columbia. And in addition thereto the real estate owned by each national or other incorporated bank, and each trust, gas, electric lighting, and telephone company in the District of Columbia shall be taxed as other real estate in said District. Each gas, electric lighting, and telephone company shall pay, in addition to the taxes herein mentioned, the franchise tax imposed by subchapter II of chapter 15 of this title, and the tax imposed upon stock in trade of dealers in general merchandise under section 47-1207. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 5; July 26, 1939, 53 Stat. 1107, ch. 367, title IV, § 2(a); May 18, 1954, 68 Stat. 118, ch. 218, title XIV, § 1401; July 24, 1956, 70 Stat. 599, ch. 669, § 8(a); Oct. 21, 1972, Pub. L. 92-518, title III, § 303(a), 86 Stat. 1016; Oct. 21, 1975, D.C. Law 1-23, title V, § 501(a) (1), 22 DCR 2105.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, increased the gross receipts tax from 5 to 6 per centum.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 801(c) of act Oct. 21, 1975, D.C. Law 1-23, provided "The amendment made by section 501 [amending §§ 47-1701 to 47-1704] shall apply with respect to gross receipts or gross earnings for the year ending June 30, 1976, and for each succeeding year ending on the thirtieth day of June. The amendments made by section 501(b) [subsec. (b) of sec. 501 was added by sec. 2 of act Nov. 1, 1975, D.C. Law 1-30, 22 DCR 2545, and is classified to § 47-1711] shall take effect on the first day of the first month after the day this act becomes law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-1580.

§ 47-1702. Bonding, title, guaranty and fidelity companies.

All companies, incorporated or otherwise, who guarantee the fidelity of any individual or individuals, such as bonding companies, and all companies who furnish abstracts of titles to real property, or who insure real estate titles, shall pay to the collector of taxes of the District of Columbia three per centum of their gross receipts in the District of Columbia. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 6; Apr. 28, 1904, 33 Stat. 564, ch. 1815; Oct. 21, 1975, D.C. Law 1-23, title V, § 501(a) (2), 22 DCR 2105.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, increased the gross receipts tax from one and one-half per centum to three per centum.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(c) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1701.

§ 47-1703. Savings banks.

Savings banks having no capital stock and paying interest to their depositors shall, through their president or cashier, make affidavit to the board of personal-tax appraisers on or before the 1st day of August in each year as to the amount of their surplus and undivided profits, and shall pay to the collector of taxes of the District of Columbia a sum equal to one and one-half per centum on the amount of their surplus and undivided profits on the 30th day of June preceding.

Incorporated savings banks paying interest to their depositors shall, through their president or cashier, make report under oath to the board of personal-tax appraisers on or before the 1st day of August in each year as to the amount of their gross earnings, less the amount paid as interest to their depositors for the preceding year ending June 30th, and shall pay thereon to the collector of taxes of the District of Columbia six per centum per annum. (July 1, 1902, 32 Stat. 619, ch. 1352, § 6, par. 7; Apr. 28, 1904, 33 Stat. 564, ch. 1815; Oct. 21, 1975, D.C. Law 1-23, title V, § 501(a) (3), 22 DCR 2105.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, increased the gross earnings tax on incorporated savings banks from four to six per centum.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(c) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1701.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-1580.

§ 47-1704. Building associations.

Building associations in the District of Columbia shall pay to the collector of taxes of the District of Columbia three per centum per annum on their entire gross earnings for the preceding year ending June 30th. (July 1, 1902, 32 Stat. 620, ch. 1352, § 6, par. 9; Apr. 28, 1904, 33 Stat. 564, ch. 1815; Oct. 21, 1975, D.C. Law 1-23, title V, § 501(a) (4), 22 DCR 2105.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, increased the gross earnings tax from two to three per centum.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(c) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1701.

§ 47-1711. Declaration and payment of estimated tax.

Every bank, trust company, and building association, all gas, electric lighting and telephone companies, and all bonding, title, guaranty and fidelity companies, subject to the provisions of Section 501 (a) of the Revenue Act of 1975, shall make and file a declaration of estimated tax at such time or times and under such conditions, and shall make payments of such tax in such amounts and at such times and under such conditions as the Mayor shall, by rule,

prescribe. Such payments shall not be in excess of the amount by which said tax was increased by provisions of this act. (Oct. 21, 1975, D.C. Law 1-23, title V, § 501(b), added Nov. 1, 1975, D.C. Law 1-30, § 2, 22 DCR 2545.)

REFERENCE IN TEXT

The "Revenue Act of 1975" and "this act", referred to in text, is Act Oct. 21, 1975, D.C. Law 1-23, 22 DCR 2091. Section 501(a) of that Act amended §§ 47-1701 to 47-1704.

EFFECTIVE DATE

Section 3 of Act Nov. 1, 1975, D.C. Law 1-30, provided that "This act [enacting § 47-1711] shall take effect upon becoming law by operation of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

See, also, sec. 801(c) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-1701.

SHORT TITLE

The first section of Act Nov. 1, 1975, D.C. Law 1-30, provided "That this act [enacting § 47-1711] may be cited as the 'District of Columbia Revenue Act of 1975'."

Chapter 18.—INSURANCE COMPANIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47-1580.

§ 47-1801. Licenses—Fee—Term.

CROSS REFERENCE

Tax exemption of D.C. Insurance Guaranty Association, see § 35-1813.

Chapter 19.—MOTOR FUEL TAX

Sec.

47-1901c. Deposit into Metrobus Fund of portion of proceeds from motor vehicle fuel tax.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 40-103, 47-504, 47-2605.

§ 47-1901. Rate—Use restricted.

A tax of 10 cents per gallon on all motor-vehicle fuels within the District of Columbia, sold or otherwise disposed of by an importer, or used by him in a motor vehicle operated for hire or for commercial purposes, shall be levied, collected, and paid in the manner hereinafter provided.

* * * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title II, § 201(a), 22 DCR 2096.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, increased the motor vehicle fuel tax from eight to ten cents per gallon.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(a) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 40-103.

REPORT ON DIFFERENTIAL TAX RATES

Section 202 of act Oct. 21, 1975, D.C. Law 1-23, provided: "The Mayor of the District of Columbia shall submit to the Council of the District of Columbia, by January 1, 1976, a thorough, documented study outlining the advisability of differential tax rates on leaded and unleaded gasoline, and weighing positive and negative health, environmental and income-class impacts of such a differential tax policy."

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1443b, 5-316, 40-202, 40-808, 40-809, 47-1901c, 47-1902, 47-1903, 47-1910, 47-1911, 47-1913, 47-1915, 47-1916.

§ 47-1901c. Deposit into Metrobus Fund of portion of proceeds from motor vehicle fuel tax.

Notwithstanding any other provision of law, on and after the effective date of this section, not less than one-fifth of the proceeds collected under section 47-1901 shall be deposited into the Metrobus Fund established by section 1-1443b together with such additional proceeds collected under section 47-1901 as the Mayor of the District of Columbia may, in his discretion, deem to be appropriate and necessary. (Oct. 21, 1975, D.C. Law 1-23, title II, § 201(b), 22 DCR 2096.)

CODIFICATION

Section was enacted as part of the Revenue Act of 1975, and not as part of Act Apr. 23, 1924, ch. 131, as amended, which comprises this chapter.

EFFECTIVE DATE

Section 801(a) of act Oct. 21, 1975, D.C. Law 1-23, provided: "The amendments made by sections 101, 102, 201, and 203 shall take effect on the first day of the first month after the day this act becomes law according to the provisions of section 602(c) of the District of Columbia Self-Government and Governmental Reorganization Act [§ 1-147(c)]."

§ 47-1902. Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1903. Importers—License—Application for—Contents—Fee—Bond—Issuance—Revocation.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1907. Importer's records of transactions subject to inspection of assessor and collector.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1912. Tax on fuel sold by United States agency in the District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-1916. District of Columbia Council to make necessary regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-1919. Continuation of uncompleted projects at end of fiscal year.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 20.—DOG TAX

§ 47-2003. Impounding of dogs found at large.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 21.—PRIVATE EMPLOYMENT AGENCY LICENSES

§ 47-2101. Employment agencies—License required—Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2102. Bond.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2103. Registers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2107. Inspection.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 22.—PUBLIC AUCTION PERMITS

§ 47-2201. Public auction—Auction of merchandise without permit from Commissioner prohibited.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2202. Application for permit—Fee—Information to be furnished.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2204. Suspension of license for violations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 23.—GENERAL LICENSE LAW

§ 47-2301. Licenses required for business or profession—Application—Transfer of license—Signing and sealing.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2302. Compliance with fire escape laws and regulations required before license is issued.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2303. Theater licenses—Revocation for failure to comply with regulations for decency.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2311. Massage establishments—Turkish, Russian, or medicated baths.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2321. Bowling alleys—Billiard and pool tables—Games.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2322. Shooting galleries.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2328. Classification of buildings containing living quarters for licenses—Fees—Buildings exempt from license requirement.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2331. Vehicles for hire—Hackers' licenses—Identification tags on vehicles—Sightseeing vehicles for school children, occasional purposes—Ambulances, private vehicles for funeral purposes—Issuance of licenses—Payment of fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TAXI SERVICE STUDY

Section 27 of Act Oct. 26, 1973, Pub. L. 93-140, 87 Stat. 509, provided:

"(a) Notwithstanding any other provision of law, the Public Service Commission of the District of Columbia is authorized and directed to conduct a study of the adequacy of service and regulation of the taxicab industry in the District of Columbia. The study shall include the feasibility of allowing the installation of meters in taxicabs in the District of Columbia.

"(b) Within six months following the date of enactment of this Act, the Public Service Commission shall transmit the final report of the results of such investigation and study, including its finding and recommendations, to the Commissioner of the District of Columbia and the District of Columbia Council, and the District of Columbia government shall within ninety days consider the same, and transmit its recommendations and the final report of the Public Service Commission to the Congress."

§ 47-2336. Sales on streets or public places.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Newspaper vendors

Where evidence showed no clear pattern of police harassment likely to be continued and where in light of

administrative directive concerning vendors' licensing statute it did not appear likely that police would continue to attempt to prevent underground newspaper vendors from selling newspapers from stacks upon sidewalk, injunctive relief was properly refused. *Washington Free Community, Inc., et al. v. J. V. Wilson, Chief of Police, et al.* (1973, 484 F. 2d 1078, 157 U.S. App. D.C. 360; aff'g 334 F. Supp. 77).

§ 47-2337. Solicitors.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2338. Guides.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2339. Secondhand dealers—Classification—Licensing—Stolen property.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2340. Dealers in dangerous weapons.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2341. Private detectives.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2344. District of Columbia Council may regulate, modify, or eliminate license requirements.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

NOTES TO DECISIONS

Solid waste disposal

As the business of disposing of solid waste is not a business or calling otherwise listed in licensing statutes, the District of Columbia may fix a license fee for the disposal of such wastes in such amount as will be commensurate with the cost to the District of regulating the disposal of such wastes, but any fee would be illegal to the extent that the revenue therefrom exceeded applicable costs. *Metropolitan D.C. Refuse Haulers Association et al. v.*

W. E. Washington, Commissioner et al. (1973, 479 F. 2d 1191, 156 U.S. App. D.C. 208; aff'g 360 F. Supp. 281).

Where licenses issued for collection and transportation of solid wastes in or through the District of Columbia did not cover disposal of solid wastes in the District, separate disposal fee of \$5 per ton was a "license fee" authorized by statute, to the extent that the revenue therefrom was commensurate with the costs of supervision and regulation. *Id.*

§ 47-2344a. Undertakers' licenses—Qualifications—Examination—License without examination—Authority of Commissioner and Council—Appropriations—Definitions.

* * * * *

(d) The Commissioner, and the District of Columbia Council with respect to promulgating and altering rules and regulations under paragraph (6), are hereby authorized:

* * * * *

(3) (A) To issue licenses without examination to persons licensed by other Territories and States upon the same terms and conditions as such States and Territories issue licenses without examination to persons licensed by the District of Columbia.

(B) To issue a license without examination to any person who (i) has been licensed for more than 5 years by a State or Territory which does not have a reciprocity agreement with the District of Columbia (including any agreement, commonly referred to as a courtesy card agreement, under which a person licensed as an undertaker by such State or Territory is permitted to discharge the duties of an undertaker in the District of Columbia on an occasional or other temporary basis), (ii) has more than 5 years of practical experience as an undertaker, (iii) is found qualified on the basis of such experience to discharge the duties of an undertaker in the District of Columbia, and (iv) otherwise meets the requirements of subparagraph (b) of this paragraph.

* * * * *

(As amended Oct. 8, 1975, D.C. Law 1-20, § 7(b) (2), 22 DCR 2004.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

AMENDMENT

1975—Act Oct. 8, 1975, D.C. Law 1-20, amended subsec. (d) (3) by designating existing provisions as subpar. (A), and by adding subpar. (B).

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment effective Oct. 8, 1975, see sec. 11 of D.C. Law 1-20, set out as a note under section 2-1231.

§ 47-2345. Promulgation of regulations authorized—Suspension or revocation of licenses—Bonding of licensees authorized to collect moneys—Exemptions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2346. Prosecutions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2347. Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2350. Refund of erroneously-paid fees.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 24.—SUPERIOR COURT, TAX DIVISION

§ 47-2401. Tax appeals—Definitions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2402. Retirement of Judge of District of Columbia Tax Court.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2403. Appeal from assessment—Hearing and decision.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-603-1, 45-734, 47-646, 47-710, 47-712, 47-716, 47-801e, 47-1215, 47-1531, 47-1534, 47-1593, 47-2405, 47-2413, 47-2618.

NOTES TO DECISIONS

Construction

Requirement of timely filing of petition contesting assessment of real property taxes is jurisdictional requirement which cannot be waived by failure to assert six-month limitation period as affirmative defense in answer to petition. *National Graduate University v. District of Columbia* (D.C. App. 1975, 346 A.2d 740).

Exhaustion of administrative remedy

Where taxing officials did not disclose change in assessment levels until after time for administrative review of District of Columbia tax assessments had passed, affected real property owners were not barred from seeking injunctive relief by their failure to exhaust administrative remedies. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

Injunctions

Where real property owners who had not sought administrative review of District of Columbia tax assess-

ments were excused from so doing because of lack of knowledge that debasement factor had been raised, those property owners who had sought administrative review of assessments would not be required to wait statutory period and pay tax before applying for relief by injunction. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

— Compliance

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view as de minimis differences in amounts of real property taxes between methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A.2d 305).

Payment of tax

Superior Court of the District of Columbia did not have jurisdiction to hear appeal from tax assessment where taxpayer had paid only the first installment on its taxes at the time it filed appeal, even though taxpayer paid the second installment before superior court dismissed the appeal and before the time had expired for the filing of the petition. *George Hyman Construction Co. et al. v. District of Columbia* (D.C. App. 1974, 315 A.2d 175).

Since taxpayer's allegation that taxes imposed on building which was completed in second half of the year should have been imposed only for the second half and should not have been imposed under statute providing for annual assessment was an attack on the propriety of the annual assessment, taxpayer's attack was on entire assessment, even though taxpayer recognized validity of assessment for the second half, and Superior Court was without jurisdiction to hear the appeal where taxpayer had paid only the first installment of the tax. *Id.*

Where taxpayer pursued statutory remedy provided for appeals of tax assessments, taxpayer was required to comply with the statutory requirements, including requirement that tax be paid prior to initiation of the appeal, even though taxpayer was arguing that the assessment was void and not merely excessive. *Id.*

Judicial review of income tax assessment did not lie in District of Columbia until disputed tax, together with interest and penalties, had been paid. *C. O. Perry, Sr. et ano. v. District of Columbia* (D.C. App. 1974, 314 A.2d 766; cert. denied 95 S. Ct. 63, 419 U.S. 836).

Time to appeal

Requirement that petition contesting assessment of real property be filed within six months "after payment of the tax" applies to tax exempt property, and such six-month period runs from date of assessment. *National Graduate University v. District of Columbia* (D.C. App. 1975, 346 A.2d 740).

§ 47-2404. Review by court—Decision of Superior Court, when final—Modification or reversal.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-603-1, 45-734, 47-646, 47-710 to 47-112, 47-716, 47-801e, 47-1215, 47-1531, 47-1534, 47-1593, 47-2405, 47-2413, 47-2618.

NOTES TO DECISIONS

Exhaustion of administrative remedy

Where taxing officials did not disclose change in assessment levels until after time for administrative review of District of Columbia tax assessments had passed, affected real property owners were not barred from seeking injunctive relief by their failure to exhaust administrative remedies. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

Injunctions

Where real property owners who had not sought administrative review of District of Columbia tax assessments were excused from so doing because of lack of

knowledge that debasement factor had been raised, those property owners who had sought administrative review of assessments would not be required to wait statutory period and pay tax before applying for relief by injunction. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

— Compliance

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view as de minimis differences in amounts of real property taxes between the methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A.2d 305).

§ 47-2405. Appeals of real estate assessments.

(1) Repealed. Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(g), 88 Stat. 1065; Jan. 3, 1975, Pub. L. 93-635, § 9, 88 Stat. 2177.

(2) Any person aggrieved by any assessment or valuation made in pursuance of section 47-710 may, within six months after October 15 of the year in which said valuation or assessment is made, appeal from such assessment or valuation in the same manner and to the same extent as provided in sections 47-2403 and 47-2404: *Provided, however*, That if the taxpayer shall be notified in writing not later than September 1 of a particular year of the valuation of the real estate valued in accordance with section 47-710, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided.

(3) Any person aggrieved by any assessment made in pursuance of section 47-711 may, within six months after April 15 of the year in which such assessment is made, appeal from such assessment in the same manner and to the same extent as provided in sections 47-2403 and 47-2404: *Provided, however*, That if the taxpayer shall be notified in writing not later than March 1 of a particular year of the valuation of the real estate valued in accordance with section 47-711, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided.

(4) Any person aggrieved by any reassessment made in pursuance of section 47-712, may within six months after notice of said reassessment, appeal from said reassessment in the same manner and to the same extent as provided in sections 47-2403 and 47-2404.

(5) Any person aggrieved by a reassessment or redistribution made pursuant to section 47-716, may within six months after notice of such reassessment or redistribution, appeal from such reassessment or redistribution in the same manner and to the same extent as provided in sections 47-2403 and 47-2404. (Aug. 17, 1937, ch. 690, title IX, § 5, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5(b); July 10, 1952, 66 Stat. 544, ch. 649, § 3(c); July 29, 1970, Pub. L. 91-358, title I, § 161(a)(5), 84 Stat. 580; Sept. 3, 1974, Pub. L. 93-407, title IV, § 474(g), 88

Stat. 1065; Jan. 3, 1975, Pub. L. 93-635, § 9, 88 Stat. 2177.)

CODIFICATION

The five paragraphs of this section comprise, respectively, the last sentences of subsecs. (a), (b), (c), (d), and (e) of section 5 of the act Aug. 17, 1939, title IX. Such section 5 is classified in its entirety as follows: subsection (a) to sections 47-708 and 47-709; subsection (b) to section 47-710; subsection (c) to section 47-711; subsection (d) to section 47-712, and subsection (e) to section 47-716.

AMENDMENTS

1975—Act Jan. 3, 1975, Pub. L. 93-635, again repealed the first paragraph of this section, which was based on the last sentence of subsec. (a) of section 5 of Act Aug. 17, 1939. For further details, see following paragraph.

1974—Section 474(g) of Act Sept. 3, 1974, Pub. L. 93-407, repealed the first paragraph of this section, which was based on the last sentence of subsec. (a) of section 5 of Act Aug. 17, 1939. It read as follows:

"Any person aggrieved by any assessment, equalization, or valuation made pursuant to sections 47-708 and 47-709, may within six months after October 1 of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to same extent as provided in sections 47-2403 and 47-2404: *Provided, however*, That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided, except that, in case of increase of valuation of real property over that for the immediately preceding year, where no notice in writing of such increase of valuation is given the taxpayer prior to March 1 of the particular year, no such complaint shall be required for appeal."

EFFECTIVE DATE OF REPEAL AND SAVINGS PROVISIONS

Section 474 of Act Sept. 3, 1974, Pub. L. 93-407, provided in part that the repeal of the first paragraph of this section is effective June 30, 1975. Section 476 of such Act, containing savings provisions, is set out as a note under § 47-621. Section 9 of Act Jan. 3, 1975, Pub. L. 93-635, also provided in part that the repeal is effective June 30, 1975.

CROSS REFERENCE

Composition and functions of Board of Equalization and Review, see § 47-646.

NOTES TO DECISIONS

Exhaustion of administrative remedy

Where taxing officials did not disclose change in assessment levels until after time for administrative review of District of Columbia tax assessments had passed, affected real property owners were not barred from seeking injunctive relief by their failure to exhaust administrative remedies. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

Injunctions

Where real property owners who had not sought administrative review of District of Columbia tax assessments were excused from so doing because of lack of knowledge that debasement factor had been raised, those property owners who had sought administrative review of assessments would not be required to wait statutory period and pay tax before applying for relief by injunction. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

— Compliance

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view as de minimis differences in amounts of real property taxes

between the methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A.2d 305).

§ 47-2410. Certain suits forbidden.

NOTES TO DECISIONS

Exhaustion of administrative remedy

Where taxing officials did not disclose change in assessment levels until after time for administrative review of District of Columbia tax assessments had passed, affected real property owners were not barred from seeking injunctive relief by their failure to exhaust administrative remedies. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

Injunctions

Where real property owners who had not sought administrative review of District of Columbia tax assessments were excused from so doing because of lack of knowledge that debasement factor had been raised, those property owners who had sought administrative review of assessments would not be required to wait statutory period and pay tax before applying for relief by injunction. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

— Compliance

Where previous judgment of trial court required real property tax assessment of all single-family property at 55%, trial court did not err in rejecting District of Columbia's method of computation which was designed to comply with such judgment and which resulted in average level of assessment of 55.00772%, in ordering that District recompute assessed value, correct tax roll and reissue supplementary tax bills or refunds within 90 days using method suggested by trial court which was designed to reach greater mathematical exactitude in computation of real property taxes, and in declining to view as de minimis differences in amounts of real property taxes between the methods of computation. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1975, 348 A.2d 305).

Jurisdiction

Where facts of case were so exceptional and extraordinary as to merit equitable relief, court had jurisdiction to enjoin tax authorities from using unequal levels of assessment of estimated market value of single-family dwellings for purposes of ascertaining District of Columbia real estate tax to be imposed on such dwellings despite provisions of this section stating that no suit might be filed to enjoin assessment of any tax. *District of Columbia et al. v. C. Green et al.* (D.C. App. 1973, 310 A.2d 848).

§ 47-2412. Reference by Commissioner to the Superior Court.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2413. Overpayments—Refund—Appeal.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45-735.

Chapter 25.—MISCELLANEOUS PROVISIONS

Sec.

47-2501c. Annual Federal payment—Duties of Mayor and Council—Submittal of request to President.

47-2501d. Same—Appropriation authorization.

§ 47-2501. Authorization for advance of funds by Secretary of Treasury.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

REIMBURSABLE APPROPRIATIONS

Section 722 of title VII of the District of Columbia Self-Government and Governmental Reorganization Act [approved Dec. 24, 1973, Pub. L. 93-198, 87 Stat. 821] provided:

"(a) The Secretary of the Treasury is authorized to advance to the District of Columbia the sum of \$750,000, out of any money in the Treasury not otherwise appropriated, for use (1) in paying the expenses of the Board of Elections (including compensation of the members thereof), and (2) in otherwise carrying into effect the provisions of this Act.

"(b) The full amount expended out of the money advanced pursuant to this section shall be reimbursed to the United States, without interest, during the second fiscal year which begins after the effective date of title IV [Jan. 2, 1975], from the general fund of the District."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-228.

§ 47-2501a. Annual payment by the United States—Appropriations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-2501a-1.

§ 47-2501c. Annual Federal payment—Duties of Mayor and Council—Submittal of request to President.

(a) It shall be the duty of the Mayor in preparing an annual budget for the government of the District to develop meaningful intercity expenditure and revenue comparisons based on data supplied by the Bureau of the Census, and to identify elements of cost and benefits to the District which result from the unusual role of the District as the Nation's Capital. The results of the studies conducted by the Mayor under this subsection shall be made available to the Council and to the Federal Office of Management and Budget for their use in reviewing and revising the Mayor's request with respect to the level of the appropriation for the annual Federal payment to the District. Such Federal payment should operate to encourage efforts on the part of the government of the District to maintain and increase its level of revenues and to seek such efficiencies and economies in the management of its programs as are possible.

(b) The Mayor, in studying and identifying the costs and benefits to the District brought about by its role as the Nation's Capital, should to the extent feasible, among other elements, consider—

(1) revenues unobtainable because of the relative lack of taxable commercial and industrial property;

(2) revenues unobtainable because of the relative lack of taxable business income;

(3) potential revenues that would be realized if exemptions from District taxes were eliminated;

(4) net costs, if any, after considering other compensation for tax base deficiencies and direct and indirect taxes paid, of providing services to tax-exempt nonprofit organizations and corporate

offices doing business only with the Federal Government;

(5) recurring and nonrecurring costs of unreimbursed services to the Federal Government;

(6) other expenditure requirements placed on the District by the Federal Government which are unique to the District;

(7) benefits of Federal grants-in-aid relative to aid given other States and local governments;

(8) recurring and nonrecurring costs of unreimbursed services rendered the District by the Federal Government; and

(9) relative tax burden on District residents compared to that of residents in other jurisdictions in the Washington, District of Columbia, metropolitan area and in other cities of comparable size.

(c) The Mayor shall submit his request, with respect to the amount of an annual Federal payment, to the Council. The Council shall by act approve, disapprove, or modify the Mayor's request. After the action of the Council, the Mayor shall, by December 1 of each calendar year, in accordance with the provisions in the Budget and Accounting Act, 1921 (31 U.S.C. 2), submit such request to the President for submission to the Congress. Each request regarding an annual Federal payment shall be submitted to the President seven months prior to the beginning of the fiscal year for which such request is made and shall include a request for an annual Federal payment for the next following fiscal year. (Dec. 24, 1973, Pub. L. 93-198, title V, § 501, 87 Stat. 812.)

EFFECTIVE DATE

Section 771(a) of Act Dec. 24, 1973, Pub. L. 93-198, as amended, set out as a note under § 1-121, provided: "Titles I and V, and parts A and G, and section 722 of title VII shall take effect on the date of enactment of this Act."

DEFINITIONS

The definitions in § 1-122 apply to terms appearing in this section.

CROSS REFERENCES

Duties of Mayor,

Financial affairs of District, see § 47-226.

Generally, see § 1-162.

Submission of annual budget, see § 47-221.

§ 47-2501d. Same—Appropriation authorization.

Notwithstanding any other provision of law, there is authorized to be appropriated as the annual Federal payment to the District of Columbia for the fiscal year ending June 30, 1975, the sum of \$230,000,000; for the fiscal year ending June 30, 1976, the sum of \$254,000,000; for the fiscal year ending June 30, 1977, the sum of \$280,000,000; for the fiscal year ending June 30, 1978, and for each fiscal year thereafter, the sum of \$300,000,000. For the period July 1, 1976, through September 30, 1976, there is authorized to be appropriated a Federal payment of \$70,000,000. (Dec. 24, 1973, Pub. L. 93-198, title V, § 502, 87 Stat. 813; Aug. 29, 1974, Pub. L. 93-395, § 1(7), 88 Stat. 793.)

AMENDMENT

1974—Act Aug. 29, 1974, Pub. L. 93-395, added the second sentence relating to a Federal payment for the period July 1 through Sept. 30, 1976.

EFFECTIVE DATE

See note under § 47-2501c.

§ 47-2502. Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2504. Divulging of information obtained from Bureau of Internal Revenue unlawful—Penalties.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 26.—GROSS SALES TAX

Sec.

47-2604. Vendor to collect tax.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 47-504, 47-2413, 47-2701, 47-2706, 47-2712.

§ 47-2601. Definitions.

14. (a) "Retail sale" and "sale at retail" mean the sale in any quantity or quantities of any tangible personal property or service taxable under the terms of this chapter. Said term shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include but shall not be limited to the following:

(1) Food or drink served, prepared for immediate consumption, or sold, in or by, restaurants, lunch counters, cafeterias, hotels, snack bars, caterers, boarding houses, carryout shops and other like places of business, and food or drink sold ready for immediate consumption from carts, and motor vehicles or any other form of vehicle. Hot or cold sandwiches are considered prepared foods.

(4) Repealed. Oct. 21, 1975, D.C. Law 1-23, title III, § 301(3), 22 DCR 2098.

(7) Repealed. Oct. 21, 1975, D.C. Law 1-23, title III, § 301(3), 22 DCR 2098.

(8) The sale of or charges for admission to public events, except live performances of ballet, dance, or choral performances, concerts (instrumental and vocal), plays (with and without music), operas and readings and exhibitions of paintings, sculpture, photography, graphic and craft arts, but including movies, circuses, burlesque shows, sporting events, and performances or exhibitions of any other type or nature: *Provided*, That any casual or isolated sale of or charge for admission made by a semipublic institution not regularly engaged in asking such

sales or charges shall not be considered a retail sale or sale at retail.

* * * * *

(11) The rental of textiles to commercial users, the essential part of such rental includes the recurring service of laundering or cleaning thereof.

(12) The sale of or charges made for the service of parking, storing or keeping motor vehicles or trailers. For the purposes of this paragraph "motor vehicles" mean any vehicle propelled by an internal-combustion engine or by electricity or steam, except road rollers, farm tractors, and vehicles propelled only upon stationary rails or tracks; and "trailer" means a vehicle without motor power intended or used for carrying property or persons and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property or persons wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle.

(b) The term "retail sale" and "sale at retail" shall not include the following:

(1) (A) Sales of transportation and communication services.

(B) Repealed. Oct. 21, 1975, D.C. Law 1-23, title III, § 301(5), 22 DCR 2099.

* * * * *

(5) Food or drink sold in the same form, condition, quantities and packaging as is commonly sold in grocery type food stores, except when sold by businesses as described in paragraph 14(a)(1).

* * * * *

(As amended Sept. 3, 1974, Pub. L. 93-407, title IV, § 473, 88 Stat. 1064; Jan. 3, 1975, Pub. L. 93-635, § 8(b), 88 Stat. 2177; Oct. 21, 1975, D.C. Law 1-23, title III, § 301(1)-(6), 22 DCR 2097.)

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CODIFICATION

Par. 14. (a)(8), being amended generally by title IV of Act Sept. 3, 1974, is therefore subject to the definitions and regulations provisions of such title IV, as set out in §§ 47-622 and 47-661.

AMENDMENTS

1975—Section 301 of act Oct. 21, 1975, D.C. Law 1-23, amended par. 14 as follows:

- (1) Amended par. 14(a)(1) generally.
- (2) Added par. 14(a)(12).
- (3) Repealed par. 14(a)(4) and (7).
- (4) Amended par. 14(a)(11) generally.
- (5) Amended par. 14(b)(1)(A) by striking out "other than sales of local telephone service"; and repealed par. 14(b)(1)(B).
- (6) Added par. 14(b)(5).

Section 8(b) of Act Jan. 3, 1975, Pub. L. 93-635, made a technical amendment to the 1974 amendatory act (sec. 473 of Pub. L. 93-407) without making change in the text of the section. Section 8(e) of such Act made this amendment effective on and after Sept. 3, 1974.

1974—Section 473 of Act Sept. 3, 1974, Pub. L. 93-407 amended par. 14(a)(8) generally. Prior to amendment, it read:

"(8) The sale of or charges for admission to public events, including movies, musical performances, exhibitions, circuses, sporting events, and other shows

or performances of any type or nature, except that any casual or isolated sale of or charge for admission made by a semipublic institution not regularly engaged in making such sales or charges shall not be considered a retail sale or sale at retail."

EFFECTIVE DATE OF 1975 AMENDMENTS

Sec. 801(i) and (j) of act Oct. 21, 1975, D.C. Law 1-23, provided:

"(1) Section 301, with the exception of subsections (3), (5) and (9) of that section, [amending §§ 47-2601, par. 14(a)(1), (11), (12), (b)(5), 47-2602, 47-2604, 47-2605(o)] shall take effect on the first day of the first month which begins more than 30 days after the effective date of this Act.

"(j) Subsections (3), (5) and (9) of section 301 [amending §§ 47-2601, par. 14(a)(4), (7), (b)(1), 47-2605(l)] shall take effect on June 1, 1976."

EFFECTIVE DATE OF 1974 AMENDMENT

See note under § 47-621.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47-2602, 47-2605, 47-2701, 47-2702.

§ 47-2602. Imposition of tax.

A tax is imposed upon all vendors for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as retail sale and sale at retail in this chapter). The rate of such tax shall be 5 per centum of the gross receipts from sales of or charges for such tangible personal property and services, except that—

(1) the rate of tax shall be 8 per centum of the gross receipts from the sales of or charges for the service of parking or storing motor vehicles or trailers;

(2) the rate of tax shall be 6 per centum of the gross receipts from sales of or charges for (A) any room or rooms, lodgings, or accommodations, furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients; and (B) food or drink served, prepared for immediate consumption, or sold as described in paragraph 14(a)(1) of section 47-2601; and

(3) the rate of tax shall be 6 per centum of the gross receipts from sales of spiritous or malt liquors, beer and wines; and

(4) the rate of tax shall be 2 per centum of the gross receipts from the sales of food and drink as described in paragraph 14(a)(1) of section 47-2601 when sold from vending machines.

(As amended Oct. 21, 1975, D.C. Law 1-23, title III, § 301(7), 22 DCR 2099.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(i) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-2601.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1-1443b, 47-2705.

§ 47-2604. Vendor to collect tax.

For the purpose of collecting his reimbursement as provided in section 47-2603 insofar as it can be done

and yet eliminate the fractions of a cent, the vendor shall add to the sales price and collect from the purchaser such amounts as may be prescribed by the Council of the District of Columbia to carry out the purposes of this section. (May 27, 1949, 63 Stat. 115, ch. 146, title I, § 126; Oct. 21, 1975, D.C. Law 1-23, title III, § 301(8), 22 DCR 2100.)

AMENDMENT

1975—Act Oct. 21, 1975, D.C. Law 1-23, amended section generally.

EFFECTIVE DATE OF 1975 AMENDMENT

See sec. 801(i) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-2601.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-2605. Exemptions.

Gross receipts from the following sales shall be exempt from the tax imposed by this chapter:

* * * *

(l) Sales of natural or artificial gas and electricity.

* * * *

(o) Sales of medicines, pharmaceuticals, and drugs whether or not made on prescriptions of duly licensed physicians and surgeons and general and special practitioners of the healing art.

* * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title III, § 301(9), (10), 22 DCR 2101.)

AMENDMENT

1975—Oct. 21, 1975, D.C. Law 1-23, amended subsec. (i) generally, and amended subsec. (o) by inserting "whether or not" after "drugs".

EFFECTIVE DATE OF 1975 AMENDMENTS

See sec. 801(i) and (j) of act Oct. 21, 1975, D.C. Law 1-23, set out as a note under § 47-2601.

§ 47-2617. Refunds.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2618. Appeals.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2620. Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-2621. Additional powers.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2624. Penalties and interest.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2628. Notices—How given.

CROSS REFERENCES

Appropriations available for advertising and publication of notices, see § 1-809a.

Cost of advertising and publication of notices at rates not exceeding those charged individual or commercial interests, see § 1-809.

Chapter 27.—COMPENSATING-USE TAX

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 47-504, 47-2413, 47-2601.

§ 47-2701. Definitions.

1. (a) "Retail sale", "sale at retail", and "sold at retail" means all sales in any quantity or quantities of tangible personal property, whether made within or without the District, and services, to any person for the purpose of use, storage, or consumption, within the District, taxable under the terms of this chapter. These terms shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include, but shall not be limited to, the following:

* * * *

(2) Repealed. Oct. 21, 1975, D.C. Law 1-23, title III, § 302(3), 22 DCR 2102.

* * * *

(5) The sale of any meals, food or drink, or other like tangible personal property for a consideration as described in paragraph 14(a) (1) of section 47-2601.

* * * *

(9) The rental of textiles to commercial users, the essential part of which rental includes recurring service of laundering or cleaning thereof.

(b) The terms "retail sale", "sale at retail", and "sold at retail" shall not include the following:

(1) Sales of transportation and communication services.

* * * *

(As amended Oct. 21, 1975, D.C. Law 1-23, title III, § 302(1), (3)-(5), 22 DCR 2101-2103.)

vending machine operator, licensed under the District of Columbia Cigarette Tax Act, such licensee shall pay to the Mayor (in accordance with paragraph (2) of this subsection) an amount equal to the difference between the amount of tax represented by such tax stamps on the date of their purchase and the amount of tax which an equal number of cigarette tax stamps would represent if purchased on the effective date of the amendment.

"(2) Within twenty days after the effective date of such amendment, each such licensee (A) shall file with the Mayor an affirmed statement (on a form to be prescribed by the Mayor) showing the number of such cigarette tax stamps held by him as of the beginning of the day after the effective date of this amendment, or if such day is a Sunday, as of the beginning of the following day and (B) shall pay to the Mayor the amount specified in paragraph (1) of this subsection.

"(3) Each such licensee shall keep and preserve for the twelve-month period immediately following the effective date of such amendment the inventories and other records made which form the basis for the information furnished to the Mayor on the statement required to be filed under this subsection.

"(4) For purposes of this subsection, a tax stamp shall be considered as held by a wholesaler, retailer, or vending machine operator if title thereto has passed to such wholesaler, retailer, or operator (whether or not delivery to him has been made) and if title to such stamp has not at any time been transferred to any person other than such wholesaler, retailer, or operator.

"(5) A violation of the provisions of paragraph (1), (2), or (3) of this subsection shall be punishable as provided in section 611 of the District of Columbia Cigarette Tax Act (D.C. Code, sec. 47-2810)."

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-2805. Types of licenses.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2806. Period of licenses—Suspensions and revocations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2808. Administration—Rules and regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

CROSS REFERENCE

Council authorized to change tax rates, see § 47-504.

§ 47-2809. Personnel and expenses authorized.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-2811. Redemption of cigarette or alcoholic-beverage tax stamps.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 29.—ADMISSION TO LICENSED PLACES—POSTING OF PRICE SCALE

§ 47-2902. Licensed hotels, restaurants and like establishments may not refuse admittance and service to orderly persons or exclude them because of race or color—Penalty.

NOTES TO DECISIONS

Breach of contract

When restaurant patron was ordered to leave for being shoeless, her license to be on premises was revoked, whether legally or illegally, and she had no right to remain, even though restaurant had served patron food and received payment for it, and, her remedy, if any, was a civil action for breach of contract. *S. M. Feldt v. Marriott Corporation* (D.C. App. 1974, 322 A. 2d 913).

Common law

In the absence of constitutional or statutory rights, common-law rule that restaurant owner has right to arbitrarily refuse service to any guest still controls. *S. M. Feldt v. Marriott Corporation* (D.C. App. 1974, 322 A. 2d 913).

Dress requirements

Statutory requirement that a restaurant must serve any quiet or orderly person does not prevent a restaurant from having reasonable requirements as to dress of its customers, such as a requirement that all male customers wear coats and ties or that all customers wear shoes. *S. M. Feldt v. Marriott Corporation* (D.C. App. 1974, 322 A.2d 913).

Chapter 30.—CLOSING-OUT SALES

§ 47-3002. Closing-out sales prohibited without a license—Application for license to be in writing—License fee—Bond—Records—Penalty.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-3009. Regulations.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

§ 47-3010. Preservation of authority—Delegation of functions.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

Chap. Sec.
4. Law Revision Commission..... 49-401

Chapter 1.—GENERAL PROVISIONS

§ 49-111. Disposition of compilation of laws affecting District of Columbia.

SUCCESSION IN GOVERNMENT

The District of Columbia Council and the office of Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon Jan. 2, 1975, by § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by §§ 1-141 and 1-161.

Chapter 2.—RULES OF CONSTRUCTION

§§ 49-202 to 49-206.

CROSS REFERENCE

Rules of construction for acts and resolutions of Council of District, see §§ 1-146a to 1-146c.

Chapter 3.—LAWS REMAINING IN FORCE

§ 49-301. Common law, principles of equity and admiralty, and Acts of Congress to remain in force.

NOTES TO DECISIONS

Decisions of Maryland courts

The United States Court of Appeals for the District of Columbia is not bound to follow decisions of courts of Maryland, particularly if they were handed down subsequent to the organization of the District of Columbia. *L. Blair v. The Prudential Insurance Co. of America* (1972, 472 F.2d 1356, 153 U.S. App. D.C. 281).

Jury nullification

In prosecution under statute [§ 9-123] making it unlawful for any person or group of persons wilfully and knowingly to obstruct or impede passage through or within any capitol building, court did not err in refusing to give requested instruction, essence of which was jury nullification and would have made jurors judges of the law as well as facts. *A. J. Arshack v. United States* (D.C. App. 1974, 321 A.2d 845).

Chapter 4.—LAW REVISION COMMISSION

Sec.

- 49-401. Establishment of Commission—Composition—Terms of office—Administrative provisions.
- 49-402. Duties of Commission.
- 49-403. Reports—Termination of Commission.
- 49-404. Omitted.
- 49-405. Appropriations.

§ 49-401. Establishment of Commission—Composition—Terms of office—Administrative provisions.

(a) There is established in the District of Columbia a District of Columbia Law Revision Commission (hereafter in this chapter referred to as the "Commission") which shall consist of nineteen members appointed as follows:

(1) Two members shall be appointed by the President of the United States.

(2) One member shall be appointed by the Speaker of the House of Representatives.

(3) One member shall be appointed by the President pro tempore of the Senate.

(4) One member shall be appointed by the minority leader of the House of Representatives.

(5) One member shall be appointed by the minority leader of the Senate.

(6) Three members shall be appointed by the Mayor of the District of Columbia, one of whom shall be a nonlawyer, and one of whom shall be a member of the law faculty of a law school in the District of Columbia.

(7) Three members shall be appointed by the Council of the District of Columbia, one of whom shall be a nonlawyer, and one of whom shall be a member of the law faculty of a law school in the District of Columbia *Provided That*, any appointment made by the Chairman of the District of Columbia Council which fits the foregoing criteria shall remain in effect and shall count as one of the three appointments provided for by this item.

(8) Three members shall be appointed by the Joint Committee on Judicial Administration in the District of Columbia *Provided That*, any appointment or appointments made by said Joint Committee before July 15, 1975 shall remain in effect and shall count as one or more of the appointments provided for by this item.

(9) One member shall be appointed by the District of Columbia Corporation Counsel.

(10) Two members shall be appointed by the Board of Governors of the District of Columbia unified bar.

(11) One member shall be appointed by the Director of the District of Columbia Public Defender Service.

(b) No person may be appointed as a member of the Commission unless he is a citizen of the United States. At least eight persons appointed to the Commission shall be bona fide residents of the District of Columbia who have maintained an actual place of abode in the District of Columbia for at least the ninety days immediately prior to their appointments as such members. The remaining persons appointed as members of the Commission shall be residents of the National Capital Region, as defined in the Act of June 6, 1924 (D.C. Code. sec. 1-1001 et seq.) (establishing the National Capital Planning Commission), who have maintained an actual place of abode in the National Capital Region for at least ninety days immediately prior to their appointments as such members.

(c) Members of the Commission shall serve for four-year terms and may be reappointed.

(d) The Chairman of the Commission shall be selected by the members of the Commission from among their number.

Parallel Reference Tables

TABLE 4A.—ACTS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

D.C. REGISTER, VOLUME 21						D.C. REGISTER, VOLUME 22—Continued					
Date	Page	D.C. Law	Title	Section	D.C. Code Supp.	Date	Page	D.C. Law	Title	Section	D.C. Code Supp.
1975						1975					
May 13....	3938	1-1	-----	1	5-426.	Oct. 8....	1998	1-20	-----	2	2-1231.
	3939	1-1	-----	2, 3	5-426 note.		1998	1-20	-----	3	2-1232.
	3941	1-2	-----	1(1)	46-303.		1999	1-20	-----	4	2-1233.
	3941	1-2	-----	1(2)	46-307(g)(7).		2000	1-20	-----	5	2-1234.
	3942	1-2	-----	2, 2	46-303 note.		2001	1-20	-----	6	2-1235.
May 22....	3944	1-3	-----	1	5-901 note.		2002	1-20	-----	7	2-1236.
	3944	1-3	-----	2(1)	5-902.		2004	1-20	-----	7(b)(2)	47-2344a.
	3945	1-3	-----	2(2)	5-904, 906, 911, 913, 914, 915, 916, 921, 922.		2008	1-20	-----	8	2-1237.
							2010	1-20	-----	9	2-1238.
							2012	1-20	-----	10	2-1239.
	3945	1-3	-----	2(3)	5-921.		2012	1-20	-----	11	2-1231 note.
	3945	1-3	-----	3	5-902 note.	Oct. 10....	2065	1-21	-----	1	1-171a note.
	3947	1-4	-----	101-104	7-908 note.		2065	1-21	-----	2	1-171a note.
	3949	1-5	-----	1	3-215.		2066	1-21	-----	3	1-171a.
	3949	1-5	-----	2	3-215 note.		2066	1-21	-----	4	1-171b.
							2067	1-21	-----	5	1-171c.
							2068	1-21	-----	6	1-171d.
							2068	1-21	-----	7(a)	1-1161.
							2069	1-21	-----	7(b)	1-1162.
							2069	1-21	-----	7(c)	1-1182.
							2070	1-21	-----	8	1-171e.
							2071	1-21	-----	9	1-171f.
							2071	1-21	-----	10	1-171g.
							2072	1-21	-----	11	1-171h.
							2073	1-21	-----	12	1-171a note.
						Oct. 21....	2083	1-22	-----	1	31-1901 note.
							2083	1-22	-----	2	31-1901.
							2083	1-22	-----	3	31-1902.
							2084	1-22	-----	4	31-1903.
							2086	1-22	-----	5	31-1904.
							2087	1-22	-----	6	31-1905.
							2088	1-22	-----	7	31-1906.
							2089	1-22	-----	8	31-1901 note.
							2091	1-23	-----	1	47-1551 note.
							2091	1-23	I	101	40-103.
							2094	1-23	I	102(a)	40-603.
							2094	1-23	I	102(b)	40-603-3.
							2094	1-23	I	103	1-1443.
							2095	1-23	I	104(a)	40-103 note.
							2095	1-23	I	104(b)	40-603 note.
							2096	1-23	II	201(a)	47-1901.
							2096	1-23	II	201(b)	47-1901c.
							2097	1-23	II	202	47-1901 note.
							2097	1-23	II	203	45-723.
							2097	1-23	III	301(1)-(6)	47-2601.
							2099	1-23	III	301(7)	47-2602.
							2100	1-23	III	301(8)	47-2604.
							2101	1-23	III	301(9),(10)	47-2605.
							2101	1-23	III	302(1)	47-2701.
							2101	1-23	III	302(2)	47-2702.
							2102	1-23	III	302(3)-(5)	47-2701.
							2103	1-23	IV	401(a)	47-2802.
							2103	1-23	IV	401(b)	47-2802 note.
							2105	1-23	V	501(a)(1)	47-1701.
							2105	1-23	V	501(a)(2)	47-1702.
							2105	1-23	V	501(a)(3)	47-1703.
							2105	1-23	V	501(a)(4)	47-1704.
							2105	1-23	VI	601(1), (2)	47-1551c.
							2106	1-23	VI	601(3)	47-1554.
							2106	1-23	VI	601(4)	47-1557a.
							2107	1-23	VI	601(5), (6)	47-1557b.
							2107	1-23	VI	601(7)	47-1564a.
							2109	1-23	VI	601(8)	47-1567a.
							2110	1-23	VI	601(9)	47-1567b.
							2110	1-23	VI	601(10)	47-1567e Rep.
							2110	1-23	VI	602	47-1551 note.
							2111	1-23	VI	603	47-1571a.
							2112	1-23	VI	604	47-1574b.
							2113	1-23	VI	605	47-1574.
							2113	1-23	VI	606	47-1589a, 1589c, 1589d.
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							2114	1-23	VI	608	47-1586l-1.
							2114	1-23	VI	609	47-1551c.
							2114	1-23	VII	701(a)	43-1520d.
							2115	1-23	VII	701(b)	43-1605a.
							2115	1-23	VII	701(c)	43-1504a, 1605b.
							2116	1-23	VII	702	43-1520d note.
							2116	1-23	VII	703	43-1504b.
							2117	1-23	VII	704	43-1520d note.
							2117	1-23	VII	705	43-1520d note.
							2118	1-23	VII	706	43-1520c.
							2119	1-23	VIII	801(a)	40-103 note.
							2119	1-23	VIII	801(b)	47-2802 note.
							2119	1-23	VIII	801(c)	47-1701 note.

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June 29	364	403	-----	1	40-501a, 504 note.
	369	403	-----	1	31-1115 note.
Aug. 17	-----	690	IX	5(a)	47-708 Rep., 709 Rep.

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	168	62	1	31-1115 notes.	
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June 25	1202	702	11	47-306, 603 Rep., 1010.	

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July 15	1009	281	-----	1	40-501a note.
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	1015	281	-----	1	31-1115 note.
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1940					
June 12	312	333	1	40-501a, 504 notes.	
	317	333	1	31-1115 note.	
July 2	729	523	-----	31-120 Rep.	

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Date	Page	Chapter	Title	Section	D.C. Code Supp.
1941					
July 1	504	271	-----	1	40-501a note.
	505	271	-----	1	40-504 note.
	510	271	-----	1	31-1115 note.
	517	271	-----	1	33-322 note.
Dec. 2	788	553	-----	1	45-1601 Rep.
	788	553	-----	2	45-1602 Rep.
	789	553	-----	3	45-1603 Rep.
	790	553	-----	4	45-1604 Rep.
	791	553	-----	5	45-1605 Rep.
	791	553	-----	6	45-1606 Rep.
	792	553	-----	7	45-1607 Rep.
	792	553	-----	8	45-1608 Rep.
	793	553	-----	9	45-1609 Rep.
	794	553	-----	10	45-1610 Rep.
	794	553	-----	11	45-1611 Rep.
	795	553	-----	12	45-1601 note
					Rep.
	795	553	-----	13	45-1601 note
					Rep.
	795	553	-----	14	45-1601 note
					Rep.

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1942					
June 27	429	452	-----	1	40-501a, 504 notes.
	433	452	-----	1	31-1115 note.
	439	452	-----	1	33-322 note.
Sept. 26	759	564	-----	1	45-1605 Rep.
	759	564	-----	2	45-1607 Rep.

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Date	Page	Chapter	Title	Section	D.C. Code Supp.
1943					
July 1	318	184	-----	1	40-501a, 504 notes.
	324	184	-----	1	31-1115 note.
	327	184	-----	1	33-322 note.

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1944					
June 28	518	300	-----	1	33-322 note.
	524	300	-----	1	40-501a, 504 notes.

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1945					
June 30	282	209	-----	1	33-322 note.
	287	209	-----	1	40-501a, 504 notes.
Dec. 3	592	514	-----	-----	45-1601 Rep.

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1946					
June 29	340	521	-----	-----	45-1601 Rep.
July 9	511	544	-----	1	33-322 note.
	516	544	-----	1	40-501a, 504 notes.
Aug. 2	809	744	-----	9(b)	1-808 note, 5-105, 5-713.

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	-----	258	(Art. I) VI	7	47-1567f.
	-----	258	(Art. I) VI	8	47-1567g.
July 25	436	324	-----	1	33-322 note.
	440	324	-----	1	40-501a note.
	441	324	-----	1	40-504 note.
Aug. 1	713	429	-----	-----	45-1601 Rep.
	721	442	-----	-----	45-1605 Rep.

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1948					
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	81	136	-----	2	4-210.
	81	136	-----	3	4-211.
Mar. 30	100	163	-----	-----	45-1601 Rep.
Apr. 29	205	243	-----	1	45-1601 Rep.
	205	243	-----	2	45-1602 Rep.
	206	243	-----	3	45-1609 Rep.
	206	243	-----	4	45-1609 note
					Rep.
June 19	546	555	-----	1	33-322 note.
	551	555	-----	1	40-501a, 504 notes.

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Apr. 19.....	48	73	-----	2, 3	45-1601 Rep.
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	49	73	-----	5	45-1605 Rep.
	49	73	-----	6	45-1602 Rep.
	49	73	-----	7	45-1610 Rep.
	49	73	-----		45-1601 note Rep.
June 29.....	312	279	-----	1	33-322 note.
	316	279	-----	1	40-501a, 504 notes.
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1950					
June 2.....	195	218	-----	2	43-1540 Rep.
30.....	310	428	-----	1	45-1601 Rep.
	310	428	-----	2	45-1602 Rep.
	310	428	-----	3	45-1604 Rep.
July 18.....	356	467	-----	1	33-322 note.
	361	467	-----	1	40-501a, 504 notes.
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1951					
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June 30....	98	192	-----	1	45-1601 Rep.
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	100	192	-----	1	45-1604 Rep.
	102	192	-----	1	45-1605 Rep.
	103	192	-----	1	45-1606 Rep.
	103	192	-----	1	45-1607 Rep.
	104	192	-----	1	45-1608 Rep.
	104	192	-----	1	45-1609 Rep.
	105	192	-----	1	45-1610 Rep.
	106	192	-----	1	45-1611 Rep.
	106	192	-----	1	45-1601 note Rep.
	107	192	-----	1	45-1601 note Rep.
	107	192	-----	1	45-1601 note Rep.
	107	192	-----	2	45-1601 note Rep.
Aug. 3.....	161	292	-----	1	33-322 note.
	173	292	-----	14	40-501a, 504 notes.
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1952					
June 30.....	308	531	-----	1	45-1601 Rep.
July 5.....	379	576	-----	1	33-322 note.
	391	576	-----	14	40-501a, 504 notes.
July 10.....	544	649	-----	3(c)	47-708 Rep., 709 Rep.
July 19.....	789	949	-----	1	1-1006 Rep.
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1953					
Apr. 30.....	26	32	-----	1	45-1601 Rep.
July 31.....	284	299	-----	1	33-322 note.
	295	299	-----	14	40-501a, 504 notes.
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1954					
May 18.....	103	218	I	108	43-1540 Rep.
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	108	218	II	214	43-1613 Rep.
	109	218	II	216	43-1615 Rep.
	109	218	II	217	43-1616 Rep.
	109	218	II	218	43-1617 Rep.
	110	218	IV	402	7-133 Rep.
	119	218	XV	1501	47-501a Rep.
July 1.....	383	449	-----	1	33-322 note.
	395	449	-----	13	40-501a, 504 notes.
Aug. 3.....	651	654	-----	1	47-604 Rep.
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1955					
July 5.....	251	272	-----	1	33-322 note.
	263	272	-----	12	40-501a, 504 notes.
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1956					
June 29.....	444	479	-----	1	33-321 note.
	453	479	-----	12	40-501a, 504 notes.
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1957					
June 27.....	196	85-61	-----	1	33-322 note.
	205	85-61	-----	10	40-501a, 504 notes.
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1958					
Aug. 6.....	502	85-594	-----	1	33-322 note.
	511	85-594	-----	10	40-501a, 504 notes.
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1959					
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	238	86-104	-----	10	40-501a, 504 notes.
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1960					
Apr. 8.....	21	86-412	-----	1	33-322 note.
	30	86-412	-----	10	40-501a, 504 notes.
Sept. 6.....	811	86-711.	-----	1	43-1613 Rep.
	812	86-711.	-----	1	43-1616 Rep.

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1974						1974					
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Aug. 13.....	434	93-371	-----	101	9-126a.		1037	93-407	I	101(a) (9)	4-832.
	436	93-371	-----	101	31-121.		1037	93-407	I	101(b)	4-823 note.
Aug. 14.....	446	93-375	-----	1	44-214a.		1038	93-407	I	102	4-808.
	446	93-375	-----	2	44-214a note.		1038	93-407	I	103	4-823 note.
	447	93-376	I	101	1-1121 note.		1038	93-407	I	104	4-823 note.
	447	93-376	I	102	1-1121.		1038	93-407	I	111	4-838.
	449	93-376	II	201	1-1131.		1039	93-407	I	112	4-839.
	450	93-376	II	202	1-1132.		1040	93-407	I	121(a)	4-521.
	451	93-376	II	203	1-1133.		1040	93-407	I	121(b) (1)	4-526 to 4-528.
	451	93-376	II	204	1-1134.		1040	93-407	I	121(b) (2)	4-527, 4-528.
	452	93-376	II	205	1-1135.		1040	93-407	I	121(b) (3)	4-528.
	452	93-376	II	206	1-1136.		1040	93-407	I	121(b) (4)	4-531.
	453	93-376	II	207	1-1137.		1040	93-407	I	121(b) (5)	4-531.
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	454	93-376	II	210	1-1140.		1041	93-407	I	121(d) (2)	4-521 note.
	454	93-376	II	211	1-1141.		1041	93-407	I	122	4-533a.
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	455	93-376	III	302	1-1152.		1041	93-407	I	124	4-521 note.
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	456	93-376	III	304	1-1154.		1042	93-407	II	202(1)	31-1501.
	456	93-376	III	305	1-1155.		1045	93-407	II	202(2)	31-1501.
	458	93-376	III	306	1-1156.		1049	93-407	II	202(3) (4)	31-1542.
	458	93-376	III	306(a)	1-125, 1-141, 1-161, 1-171, 1-1102, 1-1103, 1-1104a, 1-1108, 1-1110 note, 47-221, 47-244.		1049	93-407	II	203	31-1501a.
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							1050	93-407	III	205(b) (c)	31-1511 note.
	459	93-376	IV	401	1-1161.		1050	93-407	III	301	31-725.
	461	93-376	IV	402	1-1162.		1050	93-407	III	302	31-725 note.
	462	93-376	V	501	1-1171.		1051	93-407	IV	401	47-621 note.
	462	93-376	V	502	1-1172.		1051	93-407	IV	402	47-621.
	462	93-376	V	503	1-1173.		1051	93-407	IV	403	47-622.
	463	93-376	V	504	1-1174.		1052	93-407	IV	411	47-631.
	463	93-376	V	505	1-1175.		1052	93-407	IV	412	47-632.
	463	93-376	V	506	1-1176.		1052	93-407	IV	413	47-633.
	464	93-376	V	507	1-1177.		1053	93-407	IV	414	47-634.
	464	93-376	V	508	1-1178.		1053	93-407	IV	415	47-635.
	464	93-376	V	509	1-1179.		1053	93-407	IV	416	47-636.
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	471	93-376	VII	705	1-1121 note.		1057	93-407	IV	429	47-649.
	471	93-376	VII	706(a)	1-1113.		1057	93-407	IV	430	47-650.
	471	93-376	VII	706(b)	1-1104.		1057	93-407	IV	431	47-651.
	471	93-376	VII	706(c)	1-1113 note.		1058	93-407	IV	432	47-652.
	472	93-376	VII	707	1-1193.		1058	93-407	IV	433	47-653.
	472	93-376	VII	708	1-1121 note.		1058	93-407	IV	434	47-654.
Aug. 21.....	480	93-379	-----	1	49-401 note.		1058	93-407	IV	435	47-655.
	480	93-379	-----	2	49-401.		1059	93-407	IV	436	47-656.
	482	93-379	-----	3	49-402.		1059	93-407	IV	437	47-657.
	483	93-379	-----	4	49-403.		1059	93-407	IV	438	47-658.
	483	93-379	-----	5(a)	1-1507.		1060	93-407	IV	441	47-801a.
	483	93-379	-----	5(b)	49-404.		1060	93-407	IV	442	47-801-1.
Aug. 24.....	483	93-379	-----	6	49-405.		1060	93-407	IV	451	47-1567g.
	752	93-388	-----	1	35-1901 note.		1064	93-407	IV	461	47-632 note.
	752	93-388	-----	2	35-1901.		1064	93-407	IV	471	47-504.
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	753	93-388	-----	4	35-1903.		1064	93-407	IV	473	47-2601.
	757	93-388	-----	5	35-1904.		1065	93-407	IV	474(a)	47-501a Rep.
	759	93-388	-----	6	35-1905.		1065	93-407	IV	474(b)	47-301 Rep.
	760	93-388	-----	7	35-1906.		1065	93-407	IV	474(c)	47-602 Rep.
	761	93-388	-----	8	35-1907.		1065	93-407	IV	474(d)	47-603 Rep.
	761	93-388	-----	9	35-1908.		1065	93-407	IV	474(e)	47-605 Rep., 713 Rep.
	761	93-388	-----	10	35-1909.		1065	93-407	IV	474(f)	47-604, 701, 702, 704 to 707 Rep.
	762	93-388	-----	11	35-1910.						
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	762	93-388	-----	13	35-1912.		1065	93-407	IV	474(g)	47-708 Rep., 709, 2405.
	762	93-388	-----	14	35-1913.						
	763	93-388	-----	15	35-1914.		1065	93-407	IV	474(h)	47-703 Rep.
	763	93-388	-----	16	35-1915.		1065	93-407	IV	475	47-621 note.
	763	93-388	-----	17	35-1901 note.		1065	93-407	IV	476	47-621 note.
	763	93-389	-----	13	31-922.		1065	93-407	IV	477	47-661.
Aug. 29.....	793	93-395	-----	1(1)	36-701 note.		1066	93-407	V	501	47-621 note.
	793	93-395	-----	1(2)	1-141.		1089	93-412	-----	1	11-2601 note.
	793	93-395	-----	1(3)	47-101.		1090	93-412	-----	2	11-2601 to 11-2609.
	793	93-395	-----	1(4)	47-242.		1093	93-412	-----	4	11-2601 note.
	793	93-395	-----	1(5)	47-245.		1203	93-433	IV	402	11-301 note.
	793	93-395	-----	1(6)	47-246.		1223	93-471	I	101	31-1701 note.
	793	93-395	-----	1(7)	47-250ld.		1223	93-471	I	102	31-1701.
	793	93-395	-----	1(8)	1-121 note.		1224	93-471	I	103	31-1702.
	794	93-395	-----	2	5-928a.		1224	93-471	II	201	31-1711.
	794	93-395	-----	3(a)	1-1110.		1225	93-471	II	202	31-1712.
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	827	93-405	-----	6	7-701 note.		1226	93-471	II	204	31-1714.
	828	93-405	-----	8	3-204 note.		1226	93-471	II	205	31-1715.
	828	93-405	-----	10	40-501a note.		1227	93-471	II	206	31-1716.
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	1036	93-407	I	101(a) (1)	4-823.		1228	93-471	II	208	31-1718.
	1036	93-407	I	101(a) (2)	4-825.						
	1036	93-407	I	101(a) (3)	4-825.		1229	93-471	II	208(e)	7 U.S.C. 361a.
	1036	93-407	I	101(a) (4)	4-827.		1229	93-471	II	209	31-1719.
	1037	93-407	I	101(a) (5)	4-828.						
	1037	93-407	I	101(a) (6)	4-828.		1229	93-471	III	301	31-1721.
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	1430	93-471	IV	404	31-1734.		2176	93-635	7(b) (2)	Special.	
	1430	93-471	IV	405	31-1735.		2176	93-635	7(b) (3)	47-1567g note.	
	1430	93-471	IV	406	31-1736.		2176	93-635	7(c)-(e)	47-1567g.	
	1430	93-471	IV	407	31-1701 note.		2176	93-635	7(f)	47-1567g note.	
	1455	93-481		4(a)	23-591 Rep.		2177	93-635	8(a)	47-801a.	
	1455	93-481		4(b)	23-521(f).		2177	93-635	8(b)	47-2601.	
	1455	93-481		4(c)	23-522(c).		2177	93-635	8(c)	47-301.	
	1456	93-481		4(d)	23-524(a).		2177	93-635	8(d)	47-661.	
	1456	93-481		4(e)	23-561(b) (1).		2177	93-635	8(e)	47-661 note.	
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	1615	93-515	I	102	31-1802.					2405.	
	1615	93-515	I	103	31-1803.		2177	93-635	10(a)	4-526.	
	1615	93-515	I	104	31-1804.		2177	93-635	10(b)	4-526 note.	
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	1615	93-515	II	202(1)	2-492.		2177	93-635	12	1-1151.	
	1615	93-515	II	202(2)	2-492.		2177	93-635	13	1-1105.	
	1615	93-515	II	202(3)	2-493.		2178	93-635	14(a)	11-156.	
	1616	93-515	II	202(4)	2-494.		2178	93-635	14(b)	11-181.	
	1616	93-515	II	202(5)	2-487.		2178	93-635	15(a), (b)	47-651.	
	1616	93-515	II	203	2-492 note.		2178	93-635	15(c)	47-652.	
	1617	93-515	III	301(1)	46-303.		2178	93-635	15(d)	47-653.	
	1617	93-515	III	301(2)	46-312.		2178	93-635	15(e)	47-654.	
	1617	93-515	III	302	46-303 note.		2178	93-635	16	23-591 Rep.	
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							2179	93-635	18	4-823 note.	
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Jan. 3	2173	93-635		1	4-823.						
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	2175	93-635		3(a)	4-823 note.						
	2175	93-635		3(b), (c)	4-521 note.						
	2175	93-635		3(d)	4-823 note.						
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	2175	93-635		5	31-1501.						
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20	84.....	8-134.	40	68.....	8-133.	40	98.....	8-128.	40	Rep.	1-1404
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24	169.....	32-403.	40	71.....	1-1001.	40	101.....	4-120.	40	663 Rep...	Rep.
24	181.....	32-408.	40	71a.....	1-1002.	40	107.....	9-101.	40	664 Rep...	1-1406
24	182.....	32-409.	40	71b.....	1-1003.	40	108.....	9-102.	40	Rep.	1-1407
24	183.....	32-410.	40	71c.....	1-1004.	40	122.....	8-115.	40	665 Rep...	Rep.
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31	61.....	47-120-1.	40	72b.....	8-105.	40	134.....	1-1304.	40	685.....	1-1425.
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